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2 BILL NO. G-96-03-04
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5 ZONING MAP ORDINANCE NO. G-_____
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8 AN ORDINANCE amending the City of
9 Fort Wayne Zoning Ordinance.
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12 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
13 WAYNE, INDIANA:
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16 Sections 157.130 (Organization), 157.131 (Procedure), 157.132 (Powers), and
17 157.133 (Zoning Hearing Officer) of the Board of Zoning Appeals subchapter are
18 hereby repealed and replaced with the following.
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21 **§ 157.130 ORGANIZATION.**
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23 The Board of Zoning Appeals, as presently constituted, is hereby continued as an
24 advisory Board of Zoning Appeals, subject to and in accordance with the
25 provisions of IC 36-7-4-900 Series, et. al.
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28 ('74 Code, § 33-26) (Ord. G-06-80, passed 3-11-80)
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21 **§ 157.131 PROCEDURE.**
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23 The procedure of the Board of Zoning Appeals shall be governed by the
24 provisions of IC 36-7-4-900 Series, et. al. The Board shall adopt rules and
25 procedures concerning the filing of appeals, the giving of notice, and the conduct
26 of its hearings and operations as necessary to carry out its duties. It shall keep
27 minutes and records of its meetings and official actions, prepare written findings,
28 and record the vote of all actions taken. All minutes and records of the Board
29 shall be public records.
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21 ('74 Code, § 33-27) (Ord. G-06-80, passed 3-11-80; Am. Ord. G-09-84, passed
22 5-15-84)
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25 **§ 157.132 POWERS.**
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- 27 (A) The Board of Zoning Appeals shall hear and take action on appeals of:
28 (1) any order, requirement, decision, interpretation, or determination
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made by an administrative official, hearing officer, zoning enforcement officer, or staff member under this chapter; and

- (2) any order, requirement, decision, interpretation, or determination made by an administrative board or other body, except the Plan Commission, in relation to the enforcement of this chapter.

Any appeal filed under this section shall be subject to all applicable procedures and limitations the Board may establish by rule.

(B) Upon appeal, the Board may reverse or affirm, or may modify the appealed order, requirement, decision, interpretation, or determination. For this purpose the Board has all powers of the official, officer, board or body from which the appeal is taken.

(C) The Board shall approve or deny all of the following uses and/or requests. In all cases, the Board may impose reasonable conditions as part of its approval.

(1) Contingent uses (§ 157.031), if the Board determines that:

(a) the proposed use is essential and desirable to the public convenience or welfare; and

(b) the proposed use does not conflict with the comprehensive plan or any other plan duly adopted by ordinance by the Fort Wayne Common Council.

(2) Special uses (§ 157.032), if the Board determines that:

(a) the public convenience and welfare will be substantially served;

(b) the proposed use will not be unduly detrimental to the surrounding area;

(c) the nature, location, size and site layout of the use will be compatible with the immediate area;

(d) vehicular traffic to and from the proposed use will not create undue hazards to normal traffic in the vicinity of the request; and

(e) the proposed use does not conflict with the comprehensive plan.

- (3) Variance of the permitted use provisions of this chapter, pursuant to IC 36-7-4-918.4, if the Board determines that:

 - (a) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - (b) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - (c) the need for the variance arises from some condition peculiar to the property involved;
 - (d) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
 - (e) the approval does not interfere substantially with the comprehensive plan.

(4) Variances from the development standards of this chapter, pursuant to IC 36-7-4-918.5, if the Board determines that:

 - (a) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - (b) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - (c) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

(5) Conditional uses or other approvals as provided for in this chapter.

('74 Code, § 33-28) (Ord. G-06-80, passed 3-11-80; Am. Ord. G-09-84, passed 5-15-84)

§ 157.133 ZONING HEARING OFFICER.

The Plan Commission may authorize the creation of a hearing officer for the type of cases and in accordance with the procedures outlined in IC 36-7-4-923 and IC 36-7-4-924.

('74 Code, § 33-29) (Ord. G-09-84, passed 5-15-84)

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Sections 157.030 (Conformance with provisions required), 157.031 (Contingent uses), and 157.032 (Special uses) of the District Regulations subchapter are hereby repealed and replaced with the following.

§ 157.030 PURPOSE.

The purpose of this subchapter is to carry out the general purpose and intent of the Zoning Ordinance, and in doing so to:

- (A) establish uses that the Board of Zoning Appeals may permit as contingent uses and special uses, along with the zoning districts where special uses will be allowed;
- (B) set forth the uses permitted in the City's residential, commercial, and industrial districts;
- (C) establish other permitted and prohibited land uses;
- (D) establish minimum standards for lot areas and sizes, yard requirements, and residential building sizes;
- (E) establish maximum building and/or structure heights and maximum residential lot coverage standards;
- (F) establish standards for accessory construction such as garages, sheds, fences, and similar structures and uses; and
- (G) establish review and approval procedures for development plans.

§ 157.031 CONTINGENT USES.

The following contingent uses may be permitted by the Board of Zoning Appeals in any zoning district if the Board determines that the request meets the requirements of § 157.132 (C)(1). As part of its approval, the Board may impose appropriate conditions regarding the location, site design, and other features of the proposed building, structure, use, or site development as are reasonably related to the purposes of this chapter.

- (A) **Airports** (public and private), including accessory structures and uses.
- (B) **Cemeteries** (public and private), including accessory uses such as crematories, mausoleums, and/or mortuaries.
- (C) **Community facilities** such as a botanical garden/conservatory, library, planetarium, public transportation facility, museum, zoo, or similar use.

- (D) **Educational institutions** not otherwise permitted.
- (E) **Golf courses**, including accessory uses such as driving ranges and/or maintenance and clubhouse facilities.
- (F) **Group residential facilities**, provided the use will not be unduly detrimental to the surrounding area because of number of residents, noise, vehicle traffic, parking, or other similar activity.
- (G) **Health care facilities**, such as a hospital, nursing home, assisted living facility, sanitarium, asylum, or similar facility.
- (H) **Heliports** (public and private), as a primary or accessory use.
- (I) **Penal or correctional institutions**.
- (J) **Public or employee parking areas**, when used as an accessory use to a conforming or a legal nonconforming use and located within 300 feet of the main use or structure on an adjacent or detached lot, subject to the regulations of §§ 157.105 through 157.118.
- (K) **Utility and commercial communication facilities** such as:
- (1) electric substations and telephone exchanges;
 - (2) radio, television, telephone, or similar transmitter stations and towers, as a primary or accessory use. However, a contingent use permit shall not be required for a commercial communication tower which would be an accessory use to a permitted primary use, provided the tower does not exceed the height requirement of the zoning district in which it is proposed or 75 feet (whichever is less); and
 - (3) other similar uses of a public utility or public service nature, including structures and accessory uses as needed.

('74 Code, § 33-12) (Ord. G-06-80, passed 3-11-80; Am. Ord. G-44-92, passed 10-13-92)

§ 157.032 SPECIAL USES.

The following special uses may be permitted by the Board of Zoning Appeals, in the zoning districts specified in this section, if the Board determines that the request meets the requirements of § 157.132 (C)(1). As part of its approval, the Board may impose appropriate conditions regarding the location, site design, and other features of the proposed building, structure, use, or site development as are reasonably related to the purposes of this chapter. In reviewing a petition for any special use, the Board shall also consider the location and size of the use; the nature and intensity of the

operations involved in or conducted in connection with it; and its site layout, including access provisions and parking requirements. See table at the end of this section for a reference list of permitted special uses and the zoning districts where the special uses are allowed.

- (A) **Animal raising or breeding** for laboratory uses, fur or scent production, or other similar non-food production purposes (as distinguished from general livestock raising), may be permitted by the Board in B1A, B1B and B3B Districts.
- (B) **Bed and breakfast establishments** may be permitted by the Board in R3, RA and RB Districts.
- (C) **Business storage facilities** may be permitted by the Board in B3B and B4 districts. The facility shall be used as an accessory use to a conforming commercial or industrial use located on the same or detached lot or tract, provided that all material storage at the facility shall be located within an enclosed structure.
- (D) **Class II child care homes** may be permitted by the Board in R1, R2, R3, RA and RB Districts.
- (E) **Country clubs** may be permitted by the Board in R1, R2, R3, RA and RB Districts. A country club may include related accessory and/or recreational uses such as a golf course.
- (F) **Fairgrounds** may be permitted by the Board in B1A, B1B, B3A and B3B Districts.
- (G) **Funeral homes** may be permitted by the Board in R1, R2, RA and RB Districts.
- (H) **Hazardous waste treatment, storage, and disposal facilities** may be permitted by the Board in M2 and M3 Districts. This would include a proposal for an expansion or major modification of an existing facility. In addition to meeting the applicable requirements of 329 IAC 3, and any subsequent applicable revisions, the facility shall meet the following requirements:
 - (1) the facility shall not be located within 600 feet of any dwelling in existence as of the date of the public notice for Board of Zoning Appeals consideration of the project;
 - (2) the boundaries of the area used for the waste treatment, storage, and disposal part of the facility shall not be located or expanded within 100 feet of the property boundaries of the facility site; and
 - (3) the facility shall be constructed and operated in accordance with a permit issued by the appropriate government agency under the Resource Conservation and Recovery Act (42 U.S.C. 6901, et. seq.).

As part of its review of the request, the Board may also consider the following:

- (1) transportation and trucking routes to and from the facility;
- (2) hours of operation;
- (3) proposals for storage of materials; and
- (4) proposals for the provision of screening, buffering, and fencing between the facility and adjacent structures and uses.

As long as the Indiana Hazardous Waste Site Approval Authority is in existence, any request to establish, expand, or modify a hazardous waste treatment, storage, and/or disposal facility shall be under the exclusive control of that authority to review and determine. Approval by the Board shall not be required if a facility has received approval from the State as set forth in IC 13-7-8-6 and, as part of that approval, local zoning and land use control over the facility is specifically pre-empted.

- (I) **Home-based businesses** may be permitted by the Board in R1, R2, R3, RA and RB Districts. In addition to meeting the criteria established in §157.132 (C)(2), the home-based business shall meet the following requirements:
- (1) the business shall only be operated by residents of the dwelling; no outside employees shall be permitted;
 - (2) the business shall not change the residential character of the structure or immediate area;
 - (3) the business must be incidental and secondary to the principal use of the dwelling as a residence, and must be conducted entirely within the dwelling or attached garage. No home-based business shall be operated from a detached accessory structure;
 - (4) the business shall use only normal office equipment, including but not limited to a typewriter, computer, calculator, fax machine, or copier. Equipment noise shall not be permitted to impact adjacent properties;
 - (5) the business shall not occupy more than 25% of the gross floor area of a single family residence, including any space used for storage for the business. All storage related to the business use shall be contained within the dwelling or attached garage;
 - (6) the business shall not display or create any external evidence of the business, except that a single vehicle, used in conjunction with the business, may be parked outside and may display advertising or a logo. The vehicle shall comply with the restrictions listed in §72.23 of the City Code;

- (7) no structural alterations shall be made to the dwelling unit to accommodate the business. No separate entrances or building additions shall be added for the use of the business;
 - (8) a home-based business shall not be permitted in a two family or multiple family dwelling unit;
 - (9) only one (1) business shall be permitted per lot or tract, and the Board may approve the business for use by the current resident/applicant only;
 - (10) there may be a limited number of clients or customers who come to the home; however, the number may be limited by the Board. It is intended that no more than two clients or customers be present at any time;
 - (11) no retail sales shall be permitted on the property, except that as part of its consideration of the request, the Board may permit limited retail sales as an accessory use; and
 - (12) wall and freestanding signage shall not be permitted in association with the home-based business, and the address of the home may not be used to advertise the business;
 - (13) as part of its review of a request for a home based business, the Board may consider any existing plat or deed restrictions limiting the uses of the property included in the request.

Permitted home-based businesses. The following uses shall be permitted as a home-based business:

- (1) accounting or bookkeeping office;
 - (2) architect, engineer, land surveyor, or other similar office;
 - (3) massage therapy;
 - (4) one-chair beauty salon, barber shop, nail salon, or similar use;
 - (5) psychic reading business;
 - (6) real estate, insurance or similar office;
 - (7) seamstress or tailor; and
 - (8) teaching/tutoring, including music lessons.

Prohibited home-based businesses. The following uses shall not be considered a home-based business:

- (1) amusement enterprises of any public nature;
 - (2) animal grooming, animal kennel, or pet shop; and
 - (3) production, manufacturing, assembly, or repair of products or components of products.

Home workshops may be permitted by the Board in R1, R2, R3, RA and RB Districts. In addition to meeting the criteria established in §157.132 (C)(2), the workshop shall meet the following requirements:

 - (1) the person operating the home workshop shall be a resident of the premises; no outside employees shall be permitted;
 - (2) in no case shall a home workshop be allowed in an accessory structure prior to the occupancy of the principal dwelling on the lot, parcel, or tract of land;
 - (3) the workshop shall not change the residential character of the structure or immediate area;
 - (4) the workshop must be incidental and secondary to the principal use of the dwelling as a residence, and must be conducted entirely within the dwelling, attached garage, or accessory structure located on the same lot or tract;
 - (5) the workshop shall use only that equipment appropriate for small scale enterprises. Equipment noise shall not be permitted to impact adjacent properties. As part of the application the applicant shall include a list of any equipment proposed to be used as part of the operation of the home workshop for review and approval by the Board;
 - (6) the workshop shall not occupy more than 25% of the gross floor area of a single family residence, or 50% of the gross floor area of an accessory structure, including any space used for storage for the workshop. All storage related to the use of the workshop shall be contained within the dwelling or accessory structure;
 - (7) the business shall not display or create any external evidence of the business, except that a single vehicle, used in conjunction with the business, may be parked outside, and may display advertising or a logo. The vehicle shall comply with the restrictions listed in §72.23 of the City Code;
 - (8) no separate entrances or building additions shall be added to the dwelling unit or attached garage for the use of the workshop;
 - (9) a home workshop shall not be permitted in a two family or multiple family dwelling unit, or in an accessory structure on the same lot or tract as a two

family or multiple family dwelling;

- (10) only one (1) home workshop shall be permitted per lot or tract;
- (11) there may be a limited number of clients or customers who come to the home; however, the number may be limited by the Board. It is intended that no more than two clients or customers be present at any time;
- (12) no retail sales shall be permitted on the property, except that as part of its consideration of the request, the Board may permit limited retail sales as an accessory use; and
- (13) wall and freestanding signage shall not be permitted in association with the home-based business, and the address of the home may not be used to advertise the business; and
- (14) as part of its consideration of a request for a home workshop, the Board may consider any existing plat or deed restrictions limiting the uses of the property included in the request.

Permitted home workshops. The following uses shall be permitted as a home workshop:

- (1) ceramics/pottery making or similar crafts;
- (2) copy and duplicating service;
- (3) small electronic equipment repair such as televisions and video cassette recorders; and
- (4) woodworking.

Prohibited home workshops. The following uses shall not be considered a home workshop:

- (1) amusement enterprises of any public nature;
- (2) animal grooming, animal kennel, or pet shop;
- (3) mechanical or body repair of automotive vehicles, other than routine maintenance and minor repair of personal motor vehicles titled to the occupants of the property; and
- (4) small engine repair.

(J) **Indoor shooting ranges** may be permitted by the Board in B1A and B1B Districts, provided the range shall be constructed so as to prevent any danger from firearms to persons or property outside the facility.

- (K) **Junk and salvage yards** may be permitted by the Board in M3 Districts provided that the following conditions are met:

- (1) no portion of the property used as a junk and/or salvage yard shall be located any closer than 300 feet from any city or county residential zoning district;
 - (2) all outdoor storage shall be located entirely within an enclosed seven-foot-high opaque visual barrier, except for driveway openings onto public streets or alleys. At such openings, the screen shall extend perpendicular to the perimeter screen a distance equal to the gap in the perimeter screen on each side of the opening;
 - (3) the opaque visual barrier shall be constructed along the front, side and rear lot lines and shall be constructed in such a manner that no outdoor storage or salvage material shall be visible from an adjacent property. Any storage between the visual barrier and any property line is prohibited;
 - (4) a minimum lot area of five acres shall be required for any junk and salvage yard. The minimum dimension across the lot in any direction between two parallel or substantially parallel lot lines shall not be less than 300 feet;
 - (5) no junk and salvage yard shall be located in any designated floodplain and/or wetland areas; and
 - (6) the junk and salvage yard shall comply with all applicable fire and building codes.

- (L) **Manufactured homes (Type II)** may be permitted by the Board in R1, R2, R3, RA and RB Districts. In reviewing the request, the Board shall consider whether the proposed home is:

- (1) comparable with the existing housing pattern in the immediate area with regard to density and setbacks, and in compliance with the applicable minimum standards and requirements of this chapter; and
 - (2) constructed with roofing and siding materials which are similar to the existing homes in the immediate area.

If the Board determines the proposed home meets both the criteria established above and the criteria established for special uses in § 157.132 (C)(1), the request shall be granted.

- (M) **Medical centers or clinics** may be permitted by the Board in R3, RA and RB Districts, provided the Board finds it will be compatible with the neighborhood or area in which it is to be located.

- (N) **Neighborhood facilities or uses**, such as not-for-profit neighborhood educational, recreational, or cultural facilities, including, but not limited to, a branch YMCA, YWCA, Boys and Girls Club, or Boy Scout or Girl Scout facility, may be permitted by the Board in R1, R2, R3, RA and RB Districts provided the Board finds that it will be compatible with the character of the neighborhood or area in which it is to be located. However, the dispensing of alcoholic beverages on the premises shall not be permitted.

(O) **Off-premise signs** may be permitted by the Board in B1A, B1B, B3B, B4, M1, M2 and M3 Districts, except for properties within the Central Business District, to be between a 125 foot radius and a 350 foot radius from any city or county residential district, church, school, health care facility, historic district, designated historic structure, or property eligible for historic designation consistent with the following chart.

(1) In considering such a request, the Board will evaluate the height, location, and sightlines of the proposed sign and consider whether the sign would unduly impact the character of residential districts, churches, schools, health care facilities, designated historic structures, historic district, or property eligible for historic designation. The Board may impose reasonable conditions on the size, location, height and lighting of such a sign, to address any negative impact on the areas or uses noted above. Off-premise signs adjacent to historic districts, designated historic structures, or properties eligible for historic designation shall be located to ensure that all sightlines and vistas of historic features are maintained, and that such signs shall not negatively affect the historic integrity of such properties or structures.

(2) Concurrent with filing the petition with the Board of Zoning Appeals, the petitioner shall send a notice describing the proposal along with the date and time of the hearing to all property owners within a 350 foot radius of the petitioned location and any registered neighborhood associations having boundaries on the site and within a 350 foot radius of the site. A copy of the mailing list shall be submitted with the petition.

Off-Premise Signs Authorized for Special Uses				
Zoning District	Maximum Sign Size (sq. ft.)	Maximum Height (feet)	Minimum Setback (feet)	Distances from Residential/Historic District, School, etc. (feet)
B1A & B1B	100	35	15	125 – 350
B3B	100	35	15	125 – 350
B4	300	35	20	125 – 350
M1	100	35	15	125 – 350
M2	300	35	20	125 – 350
M3	675	35	30	250 – 350

(P) **Outdoor recreational facilities** such as a golf driving range, miniature golf course, batting cage, or other similar uses may be permitted by the Board in B1A, B1B and B3B Districts.

(Q) **Outdoor recreational uses** such as softball/baseball diamonds and/or soccer fields; or similar private outdoor recreational uses, as a principal use of the property, may be permitted by the Board in R3, RA and RB Districts.

(R) **Professional offices and personal services** may be permitted by the Board in R3, RA and RB Districts. This use shall include services as described below, where the service is proposed to be provided from a location which is not the primary residence of the person(s) providing the service. It shall also include services which are operated in a way which prevents their being classified as a home occupation or home-based business. Permitted services shall include, but not be limited to, the following:

- (1) adoption service;
- (2) advertising office;
- (3) architect, engineer, land surveyor, or similar office;
- (4) artist studio or school;
- (5) bank, credit union, or savings and loan association;
- (6) barber shop;
- (7) beauty salon;
- (8) child and/or adult care center;
- (9) consulting service;

- (10) counseling service;
 - (11) dance studio or school;
 - (12) dentist office;
 - (13) doctor office;
 - (14) finance office;
 - (15) insurance office;
 - (16) interior designer office;
 - (17) law office;
 - (18) loan office;
 - (19) massage therapy establishment;
 - (20) medical related services;
 - (21) nail salon;
 - (22) optician or optometrist office;
 - (23) professional association or commercial office not otherwise listed;
 - (24) real estate, broker, or appraiser office;
 - (25) stockbrokers office; and
 - (26) tanning salon.

(S) **Railroad switching yards for truck trailers** may be permitted by the Board in M1, M2 and M3 Districts.

(T) **Residential fencing** may be permitted by the Board in R1, R2, R3, RA and RB Districts as the principal use of a residential lot or tract. The fencing shall be located within 200 feet of the lot owners primary structure. As part of its review of the request, the Board may also consider:

- (1) the height location and materials of the proposed fencing;
 - (2) location of structures on adjacent lots; and
 - (3) granting a waiver of the required front yard setback.

(U) **Sanitary landfills** may be permitted by the Board in M2 and M3 Districts. This would include a proposal for an expansion or major modification to an existing facility. In addition to meeting the requirements of §157.132 (C)(2), the proposed development shall be reviewed subject to and constructed in accordance with the provisions of 329 IAC 2 or any subsequent applicable revisions. Under the provisions of 329 IAC 2, a sanitary landfill is subject to the location restrictions listed under 329 IAC 2-10-1, and shall meet the following requirements:

- (1) a landfill facility shall not be located within 600 feet of any dwelling in existence as of the date of public notice for Board of Zoning Appeals consideration of the project;
 - (2) the boundaries of the area used for the waste disposal operation shall not be located or expanded within 100 feet of the property boundaries of the facility site; and
 - (3) the facility shall be constructed and operated in accordance with a permit issued by the appropriate government agency under the Resource Conservation and Recovery Act (42 USC 6901 et seq.).

As part of its consideration of the request, the Board may also consider the following:

- (1) transportation and trucking routes to and from the facility;
 - (2) hours of operation;
 - (3) proposals for storage of materials; and
 - (4) proposals for the provision of screening, buffering, and fencing between the facility and adjacent structures and uses.

(V) **Self-service storage (mini-warehouse) facilities** may be permitted by the Board in B3B and B4 Districts, provided that the following requirements are met:

- (1) the facility must have direct access to an arterial or collector street;
 - (2) the use shall be limited to self-service personal storage only; and
 - (3) landscaping shall be provided to adequately screen the structures and parking areas from any adjacent residential zoning district or residential use. The screening shall be at least 6 feet in height. The Board may also permit or require perimeter fencing for the site.

(W) **Temporary facilities** such as mobile office units or similar temporary facilities permitted under §157.004, may be granted an extension of time by the Board for continuation of use.

SPECIAL USES AND DISTRICTS ALLOWED

	SPECIAL USE	DISTRICT(S)
1	Adoption service	R3, RA, and RB
2	Advertising office	R3, RA, and RB
3	Animal raising or breeding (non-food production)	B1A, B1B and B3B
4	Architect office	R3, RA and RB
5	Artist studio or school	R3, RA and RB
6	Bank, credit union, or savings and loan association	R3, RA and RB
7	Barber shop	R3, RA and RB
8	Batting cage	B1A, B1B and B3B
9	Beauty salon	R3, RA and RB
10	Bed and breakfast establishment	R3, RA and RB
11	Business storage facility	B3B and B4
12	Child and/or adult care center	R3, RA and RB
13	Class II child care home	R1, R2, R3, RA and RB
14	Counseling service	R3, RA, and RB
15	Consulting service	R3, RA, and RB
16	Country club	R1, R2, R3, RA and RB
17	Dance studio or school	R3, RA and RB
18	Dentist office	R3, RA and RB
19	Doctors office	R3, RA and RB
20	Engineer office	R3, RA and RB
21	Fairground	B1A, B1B, B3A and B3B
22	Funeral home	R1, R2, RA and RB
23	Golf driving range, miniature golf course	B1A, B1B and B3B
24	Hazardous waste treatment, storage and disposal facility	M2 and M3
25	Home workshop	R1, R2, R3, RA and RB
26	Home-based business	R1, R2, R3, RA and RB
27	Indoor shooting range	B1A and B1B
28	Insurance office	R3, RA and RB
29	Interior designer office	R3, RA, and RB
30	Junk and salvage yard	M3
	Land surveyor office	R3, RA and RB

	Law office	R3, RA and RB
	SPECIAL USE	DISTRICT(S)
1	Loan office	R3, RA and RB
2	Manufactured home Type II	R1, R2, R3, RA and RB
3	Medical related services	R3, RA and RB
4	Medical center or clinic	R3, RA and RB
5	Nail salon	R3, RA and RB
6	Neighborhood facility	R1, R2, R3, RA, RB, B1A and B1B
7	Off-premise signs between a 125 foot radius and a 350 foot radius from any city or county residential district, church, school, health care facility, or from any historic district or historic structure	B1A, B1B, B3B, B4, M1, M2 and M3 districts, except for properties within the defined Central Business District
8	Optician or optometrist office	R3, RA, and RB
9	Outdoor recreation uses (ball diamonds and soccer fields)	R3, RA and RB
10	Professional association or commercial office	R3, RA and RB
11	Railroad switching yard for truck trailers	M1, M2 and M3
12	Real estate, broker, or appraiser office	R3, RA and RB
13	Residential fencing	R1, R2, R3, RA and RB
14	Sanitary landfill	M2 and M3
15	Self-service storage (mini warehouse) facility	B3B and B4
16	Stockbroker office	R3, RA and RB
17	Tanning salon	R3, RA and RB

The following section (Section 157.041) shall be added to the District Regulations subchapter:

§ 157.041 HOME OCCUPATIONS

- (A) A home occupation is an accessory use of a residentially zoned dwelling. In order to qualify as a home occupation, the proposed use must comply with all of the following:
 - (1) the home occupation shall be operated only by residents of the dwelling; no outside employees shall be permitted;
 - (2) the home occupation must be incidental and secondary to the principal use of the dwelling as a residence, and shall not change the residential

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character of the structure or immediate area;

- (3) the home occupation shall be conducted entirely within the dwelling unit. No home occupation shall be operated from an attached or detached accessory structure or garage;
- (4) only normal office equipment, including but not limited to a typewriter, computer, calculator, fax machine, or copier may be used in connection with the home occupation;
- (5) the home occupation shall not occupy more than 20% of the gross floor area of a single family residence, including any space used for storage for the home occupation. All storage related to the home occupation use shall be contained within the dwelling unit;
- (6) the home occupation shall not display or create any external evidence of the operation of the occupation except that a single vehicle, used in conjunction with the occupation, may be parked outside and may display advertising or a logo. The vehicle shall comply with the restrictions in §72.23 of the City Code;
- (7) no structural alterations shall be made to the dwelling to accommodate the home occupation. No separate entrances or building additions shall be added for the use of the home occupation;
- (8) a home occupation shall not be permitted in a two family or multiple family dwelling unit;
- (9) only one (1) home occupation shall be permitted per lot or tract;
- (10) to avoid negative impacts on the character of the surrounding neighborhood, clients or customers are not permitted to come to the home and the address of the home may not be used in any advertising; and
- (11) no retail sales shall be permitted on the property.

(B) **Permitted Home Occupations.** Permitted home occupations shall include but not be limited to:

- (1) art studios;
- (2) business or office bookkeeping and/or accounting;
- (3) home offices; and
- (4) typing and other office services.

(C) **Prohibited Home Occupations.** The following uses shall not be permitted as a home occupation:

- (1) amusement enterprises of any public nature;
 - (2) barber shops, beauty salons, nail salons, tanning parlors, or similar uses;
 - (3) care and/or breeding of animals, including animal grooming;
 - (4) catering, or food preparation of any kind;
 - (5) equipment repair and/or service;
 - (6) massage therapy;
 - (7) mechanical or body repair of automotive vehicles, other than routine maintenance and minor repair of personal motor vehicles titled to the occupants of the property;
 - (8) production, manufacturing, repair, or assembly of products or components of products; and
 - (9) psychic reading business.

Section 157.002 (Definitions) shall be amended by adding the following definitions:

ADULT CARE CENTER. A building, other than the operator's principal place of residence, where adults receive day care from a provider:

- (1) while unattended by a relative, legal guardian, or custodian;
 - (2) for regular compensation; and
 - (3) for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays and holidays.

It is intended that adult care centers be classified as commercial uses, and be located in commercial zoning districts.

ADULT CARE HOME. A residential structure, which is the primary residence of the adult care provider, in which more than six (6) but less than twelve (12) adults not related to the provider receive day care for regular compensation.

AIRPORT, (PUBLIC and PRIVATE). Any area of land used for the landing and take-off of aircraft, including all accessory structures and uses.

ASSISTED LIVING FACILITY. A residential establishment or institution other than a hospital or nursing home which provides living accommodations and medical services primarily to individuals 55 years of age or over and to individuals who, due to illness or disability, require care similar to that provided to persons who are 55 years or over. Services like transportation, housekeeping, dietary supervision, and recreational activities may also be offered.

BED AND BREAKFAST ESTABLISHMENT. A house, or portion thereof, where short-term lodging rooms with or without meals are provided for compensation. The operator(s) of the inn shall live on the premises.

CHILD CARE. A service that provides for the care, health, safety, supervision and/or guidance of a child's social, emotional, and educational growth, on a regular basis, in a place other than the child's own home.

The following uses shall not be considered as child care under the terms of this chapter:

- (1) a program for children operated by the department of education or a public or private school;
- (2) a nonresidential program that provides child care for less than four (4) hours a day;
- (3) a recreational program for children that operates for not more than ninety (90) days in a calendar year;
- (4) a program whose primary purpose is to provide social, recreational, or religious activity for school age children such as scouting, boys club, girls club, sports or the arts; and
- (5) child care where the provider cares for fewer than six (6) children, not including children for whom the provider is a parent, stepparent, guardian, custodian, or other relative.

CHILD CARE CENTER. A building, other than the operator's principal place of residence, where children receive child care from a provider:

- (1) while unattended by a parent, legal guardian, or custodian;
- (2) for regular compensation; and
- (3) for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays and holidays.

The child care provider must hold a valid license from the State of Indiana. It is

intended that child care centers be classified as commercial uses, and be located in commercial zoning districts.

CHILD CARE HOME. A residential structure, which is the primary residence of the child care provider, in which at least six (6) children (not including the children for whom the provider is a parent, stepparent, guardian, custodian, or other relative) at any time receive child care from a provider:

- (1) while unattended by a parent, legal guardian, or custodian;
- (2) for regular compensation; and
- (3) for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays and holidays.

The child care provider must hold a valid license from the State of Indiana. This term includes a Class I Child Care Home and a Class II Child Care Home which are defined as follows:

- (1) **Class I Child Care Home.** A child care home that serves up to twelve (12) children at any time. The children may be at the home on either a part-time or full-time basis; and
- (2) **Class II Child Care Home.** A child care home that serves more than twelve (12) but not more than sixteen (16) children at any time. The children may be at the home on either a part-time or full-time basis.

COMMERCIAL COMMUNICATIONS TOWER OR DISH. A structure designed for transmitting or receiving radio, television, or telephone communications for commercial purposes, excluding amateur radio antennas, residential satellite dishes and antennas, or similar residential structures or facilities.

CONVALESCENT HOME (See "Nursing Home").

COUNTRY CLUB. An establishment typically associated with a golf course which is intended as a place for social and recreational gatherings for members of the club.

DOCTOR/DENTIST OFFICE. The private offices of not more than two (2) physicians, dentists, or similar professionals, where persons are examined or treated on an outpatient basis only. Laboratory tests shall be permitted as an accessory use.

FRATERNITY OR SORORITY HOUSE. A building, rented, occupied or owned by a national or local chapter of an organized college fraternity or sorority which is officially recognized by a college, university, or educational institution.

FUNERAL HOME (MORTUARY). A building used for human funeral services. The building may contain space and facilities for:

- (1) embalming, cremation and the performance of other services used in preparation of the dead for burial;
- (2) the performance of autopsies and other similar surgical procedures;
- (3) the storage of caskets, funeral urns, and other related funeral supplies;
- (4) the storage of funeral vehicles; and
- (5) a funeral chapel.

GARAGE, RESIDENTIAL. A detached accessory structure or portion of a principal building used for the storage of motor vehicles. The square footage of a garage and all other accessory structures shall not exceed the ground floor square footage of the principal building for a one-story structure and 1.5 times the ground floor square footage for a structure over one-story in height. In either case, the square footage of any attached garage or attached accessory structure shall be excluded from the ground floor square footage total.

GROSS FLOOR AREA. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage, not including any uncovered or unenclosed porches, patios, or decks.

HAZARDOUS WASTE. Solid waste or a combination of solid wastes that, because of quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) cause or significantly contribute to an increase in mortality or increase in serious irreversible or incapacitating reversible illness; or
- (2) pose a substantial present or potential hazard when improperly treated, stored, transported, disposed of, or otherwise managed.

HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITY. A solid waste land disposal facility designed to treat, store and/or dispose of hazardous waste regulated by 329 IAC 3 or any subsequent applicable revisions. The facility shall be operated in accordance with a permit issued by the appropriate government agency under the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.).

HELIPORT. Any landing area used for the landing and taking off of helicopters, including all necessary passenger and cargo facilities, fueling, and emergency service facilities.

HOME-BASED BUSINESS. An accessory use of a single family residential

structure which does not meet the definition of a home occupation, but complies with the requirements of §157.032 (C). A home-based business would consist of service oriented uses and typically be more intense than a home occupation, due to factors such as intensity of use or clients coming to the residence (see §157.031).

HOME OFFICE. An accessory use of a single family residential structure, where business and/or office activities are conducted. Typically the office would be an ancillary use for a principal business or office use located elsewhere.

HOME WORKSHOP. A use conducted entirely within a dwelling, or in an accessory structure located on the same lot or tract as a dwelling, which complies with the requirements of §157.032 (I). The use must: be clearly incidental and secondary to the use of the property for residential purposes; not change the character of the structure or area; or have any exterior evidence of the workshop. Home workshops are intended to be limited to low intensity uses that produce or repair a product, but can be operated in such a way that they do not adversely affect adjacent properties.

INTEGRAL CHASSIS. A frame or structure utilizing metal I-beams, necessary for the transportation of a Type II or III manufactured dwelling unit as defined here, and for the support of the dwelling unit once it is placed on a foundation or other means of support.

LANDFILL, SANITARY. A land disposal facility designed to accommodate and dispose of solid waste, excluding hazardous waste regulated by 329 IAC 3 or any subsequent applicable revisions, at which the waste is spread in layers, compacted to the smallest practical volume, and covered with material applied at the end of each operating day. The landfill shall be operated under a permit issued by the appropriate government agency under the Resource Conservation and Recovery Act (42 U.S. C. 6901, et seq.).

MANUFACTURED HOME PARK. A parcel of land designed for use by one or more Type II or Type III manufactured homes which provides the infrastructure and utilities necessary for single family occupancy of those homes.

MANUFACTURED HOME, TYPE II. A structure, fabricated in an off-site manufacturing facility for installation or assembly at a building site, bearing a seal certifying that is built in compliance with the Federal Manufactured Home Construction and Safety Standards Act (42 U.S.C Section 5401, et. Seq.) or Indiana Code 22-15-4-1 (as opposed to a Type I manufactured home which is built in conformance with the Indiana One and Two Family Dwelling Code). To be considered a Type II manufactured home, the structure must:

- (1) contain at least nine hundred fifty (950) square feet of occupied space per dwelling unit;
- (2) be a double or multiple section unit;

- (3) be placed on a permanent under-floor foundation installed in conformance with the Indiana One and Two Family Dwelling Code and according to the manufacturer's installation specifications;
 - (4) be placed onto a permanent perimeter enclosure in conformance with the Indiana One and Two Family Dwelling Code;
 - (5) have the wheels, axles, and hitch mechanisms removed;
 - (6) have siding and roofing material of a type customarily used on dwellings constructed on-site;
 - (7) be connected to all the utilities necessary for the occupancy of the unit, in conformance with the Indiana One and Two Family Dwelling Code; and
 - (8) be constructed after January 1, 1981.

MANUFACTURED HOME, TYPE III. A structure, fabricated in an off-site manufacturing facility, which is transportable in one or more sections and is designed for use as a single family dwelling. A mobile home would meet this definition. To be considered a Type III manufactured home, the structure must:

- (1) be properly connected to all utilities necessary for the occupancy of the unit; and
 - (2) be set on piers and properly skirted, with wheels and axles removed, in a manufactured home park.

MASSAGE THERAPY ESTABLISHMENT. Any establishment having a source of income or compensation derived from the practice of massage, which complies with and is licensed under the provisions of Chapter 114 of the City Code.

MEDICAL CENTER (see "Medical/Dental Clinic").

MEDICAL/DENTAL CLINIC. A facility organized and operated for the primary purpose of providing health services for outpatient treatment and care, staffed by three or more licensed physicians and/or professionals, and their associates. This use includes laboratories, pharmacies, and other related service facilities operated in conjunction with the clinic.

MOBILE HOME (see "Manufactured Home, Type III").

MOBILE HOME PARK (see “Manufactured Home Park”).

MODULAR HOME (see "Manufactured Home, Type I").

MORTUARY (see "Funeral Home").

NURSING HOME. A facility licensed by the State Board of Health which provides nursing services on an continuing basis; admits the majority of the occupants upon the advice of physicians as ill or infirm persons requiring nursing services; provides for licensed physicians services or supervision; and maintains medical records. A convalescent home, health and rehabilitation center, and rest home, if meeting the above criteria, shall also be included under this definition.

OUTDOOR RECREATION FACILITY. Private recreation facilities which do not include athletic or recreational fields as a primary component of the use. Structures are typically required by or are part of the principal use of the facility. This use shall not include public parks, public recreation areas or recreation uses which are accessory uses to existing permitted primary uses.

OUTDOOR RECREATION USE. Private athletic or recreational fields or similar uses. Structures may be required by the uses; however, they would typically only be provided as accessory uses to the primary recreation use. This use shall not include public parks, public recreation areas or recreation uses which are accessory uses to existing permitted primary uses.

PERMANENT FOUNDATION. A structural system for transferring loads from a structure to the earth, which meets the applicable specifications and requirements of the Indiana One and Two Family Dwelling Code.

RECREATIONAL VEHICLE. A vehicle built on a single chassis, containing 400 square feet or less when measured at the largest horizontal projections, and designed to be self propelled or towed by another vehicle. A recreational vehicle is not designed or intended for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use. This definition includes vehicles such as travel trailers, motor homes, boats, house boats, and campers.

REST HOME (See "Nursing Home").

RETIREMENT FACILITY. A independent living facility designed to meet the needs of persons 55 years of age or over. Typically the facility consists of independent living apartments along with common areas for meals, social gatherings, and recreation. Services such as transportation, housekeeping, dietary supervision, recreational activities, and coordination for home health care may also be offered. However, the primary purpose of the facility is not to provide medical services for its residents.

SELF-SERVICE STORAGE (MINI-WAREHOUSE) FACILITY. A building or group of buildings consisting of individual, self-contained units that are leased to individuals, organizations, or businesses for self-service storage of personal property.

SOLID WASTE. Any garbage, refuse, sludge from a waste treatment plant, sludge from a water supply treatment plant, sludge from an air pollution control

facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial , commercial, mining, or agricultural operations or from community activities. However, the term "solid waste" does not include the following:

- (1) solid or dissolved material in domestic sewage, solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act Amendments (33 U.S.C. 1342) and under Chapter 51 of the City Code;
- (2) source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011. et seq.); or
- (3) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation.

Section 157.002 (Definitions) shall be amended by changing the following definitions:

CEMETERY. Land used for the burial of the dead and dedicated for related purposes, including crematories, mausoleums and mortuaries when operated in conjunction with and within the boundaries of a cemetery.

DAY CARE (ADULT or CHILD). A service that provides for the care, health, safety, and supervision of an individual, not related to the provider, on a regular basis, in a residential structure other than the individual's own home. The provision of day care shall be a permitted use in all residential zoning districts if the following conditions are met:

- (1) the home must be the primary residence of the day care provider; and
- (2) services can only be provided for fewer than six (6) adults or children not related to the provider.

EDUCATIONAL INSTITUTION. A public, parochial, or nonprofit pre-school, primary or secondary school, junior college, college or university other than a trade or business school. Such institutions may include living quarters, dining halls, restaurants, recreational amenities, heating plants, and other accessory facilities for students, teachers and employees.

GROUP RESIDENTIAL FACILITY. A residential facility for a group of individuals (who are not mentally ill or developmentally disabled) having full or part-time supervisory staff providing care, education, and participation in community activities, living in a district authorizing residential uses. A retirement facility shall not be included under this definition.

HOME OCCUPATION. An accessory use of a residentially zoned dwelling

which complies with the requirements of §157.041.

JUNK and SALVAGE. Scrap materials, including but not limited to the following:

- (1) automobile or machinery equipment or parts, including used automobile tires;
- (2) cloth and clothing;
- (3) manufactured clay and porcelain products;
- (4) manufactured plastic products;
- (5) manufactured rubber products;
- (6) paper and paper products;
- (7) recyclable products of all kinds;
- (8) scrap metal;
- (9) wood and wood products; and
- (10) wrecked and/or dismantled automobiles and machinery.

JUNK and SALVAGE YARD. A lot, tract, development parcel, structure, or business operation which is primarily used for storing, processing, selling, or dismantling junk and salvage. This shall include scrap metal processing yards and business operations where the primary use is the storage of wrecked, junked, dismantled, or inoperable vehicles. A business operation conducted and contained entirely within an enclosed building shall not be considered a junk and salvage yard. However, the storage of used tires in an enclosed building shall be considered a junk and salvage yard.

MANUFACTURED HOME. A structure, fabricated in an off-site manufacturing facility, which is transportable in one or more sections and is designed for use as a dwelling with or without a permanent foundation when connected to the required utilities. Such a structure may or may not be built on an integral chassis. The term "manufactured home" shall not include a "recreational vehicle".

MANUFACTURED HOME, TYPE I. A structure, fabricated in an off-site manufacturing facility for installation or assembly at a building site, which is designed for use as a dwelling, either by itself or in conjunction with other similar units. Typically, a modular home would fall under this definition. To be considered a Type I manufactured home, the structure must:

- (1) be constructed in conformance with the Indiana One and Two Family

Dwelling Code;

- (2) consist of two or more sections;
- (3) be placed on a continuous, permanent underfloor foundation which is not pierced, except for required ventilation and access;
- (4) have siding and roofing material of a type customarily used on dwellings constructed on-site;
- (5) not be constructed with an integral chassis or permanent hitch; or wheels, axles, or other device allowing transportation; and
- (6) be designed to be transported by a trailer or other similar carrier which is not designed to be permanently attached to the dwelling or remain with it after the structure is placed on its foundation.

Section 157.002 (Definitions) shall be amended by deleting the following definitions:

CLINIC OR MEDICAL HEALTH CENTER

DAY CARE HOME

GARAGE, PRIVATE

MOBILE HOME PARK

TRAILER PARK

WAREHOUSE, SELF-SERVICE STORAGE FACILITY (MINI-WAREHOUSE)

Section 157.033 (A)(1) and (6) (Permitted Uses) shall be amended by changing the following:

§ 157.033 PERMITTED USES.

The following uses shall be permitted in the district hereinafter specified:

(A) R1 District, One-Family Residence.

- (1) One-family dwelling, including Type I manufactured home.
- (6) Day care (adult or child), class I child care home, adult care home.

1 SECTION 2. That this Ordinance shall be in full force and effect from and after its
2 passage and approval by the Mayor.

3 Thomas Hayhurst
4 Councilmember

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6 APPROVED AS TO FORM AND LEGALITY:
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8 J. Timothy McCaulay
9 J. TIMOTHY McCAULAY, CITY ATTORNEY
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RESOLUTION OF ZONING ORDINANCE TEXT AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on March 12, 1996 referred a proposed text amendment which proposed amendment was designated as Bill No. G-96-03-04; and,

WHEREAS, the required notice of public hearing on such proposed amendment has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed amendment on March 18, 1996.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this amendment be returned to the Common Council with a DO PASS recommendation based on the Commission's following "Findings of Fact".

- (1) the grant will not be injurious to the public health, safety, morals, and general welfare of the community;
- (2) the grant does not interfere substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law;

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held March 26, 1996.

Certified and signed this
11th day of April 1993.



Carol Kettler Sharp
Secretary

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2 occupation, due to factors such as intensity of use or clients coming to the
3 residence.

4 **HOME OFFICE.** An accessory use of a residential dwelling unit, where business
5 and/or office activities are conducted. Typically the office would be an ancillary
use for a principal business or office use located elsewhere.

6 **HOME WORKSHOP.** A use conducted entirely within a dwelling, or in an
7 accessory structure located on the same lot or tract as a dwelling, which complies
8 with the requirements of §157.032 (J). The use must: be clearly incidental and
secondary to the use of the property for residential purposes; not change the
character of the structure or area; or have any exterior evidence of the workshop.
Home workshops are intended to be limited to low intensity uses that produce or
repair a product, but can be operated in such a way that they do not adversely
affect adjacent properties.

11 **INTEGRAL CHASSIS.** A frame or structure utilizing metal I-beams, necessary
12 for the transportation of a Type II or III manufactured dwelling unit as defined
13 here, and for the support of the dwelling unit once it is placed on a foundation or
other means of support.

14 **MANUFACTURED HOME PARK.** A parcel of land designed for use by one
15 or more Type II or Type III manufactured homes which provides the infrastructure
and utilities necessary for single family occupancy of those homes.

17 **MANUFACTURED HOME, TYPE II.** A structure, fabricated in an off-site
18 manufacturing facility for installation or assembly at a building site, bearing a seal
certifying that it is built in compliance with the Federal Manufactured Home
Construction and Safety Standards Act (42 USC Section 5401, et. Seq.) or Indiana
Code 22-15-4-1 (as opposed to a Type I manufactured home which is built in
conformance with the Indiana One and Two Family Dwelling Code). To be
considered a Type II manufactured home, the structure must:

- 22 (1) contain at least nine hundred fifty (950) square feet of occupied space
per dwelling unit;
- 23 (2) be a double or multiple section unit;
- 24 (3) be placed on a permanent under-floor foundation installed in
25 conformance with the Indiana One and Two Family Dwelling Code and
according to the manufacturer's installation specifications;

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2 occupation, due to factors such as intensity of use or clients coming to the
3 residence.

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19 certifying that it is built in compliance with the Federal Manufactured Home
Construction and Safety Standards Act (42 USC Section 5401, et. Seq.) or Indiana
20 Code 22-15-4-1 (as opposed to a Type I manufactured home which is built in
conformance with the Indiana One and Two Family Dwelling Code). To be
21 considered a Type II manufactured home, the structure must:

- 22 (1) contain at least nine hundred fifty (950) square feet of occupied space
per dwelling unit;
- 23 (2) be a double or multiple section unit;
- 24 (3) be placed on a permanent under-floor foundation installed in
25 conformance with the Indiana One and Two Family Dwelling Code and
26 according to the manufacturer's installation specifications;

a. Bill No. G-96-03-04 - Petition #609

The section of the Zoning Ordinance relating to the Board of Zoning Appeals, Contingent Uses, Special Uses, Home Occupations, Day Care and Manufactured Homes are being amended and updated. Definitions relating to these sections are being amended, updated, and added as necessary.

Pat Fahey, Senior Planner, with Community & Economic Development appeared before the Commission. Mr. Fahey stated that if the Plan Commission will recall that since the adoption of the amendment of the Flood Plain Regulations Section, by the Plan Commission and City Council, last July, the Land Use Management Staff has continued its review and update of the Zoning Ordinance. He stated that he was going to give the Commission a brief overview of the amendment and then go through some of the specific provisions included in the amendment. (The overview was included in the staff summary that the Commission was given.) He stated that as the Commission would recall they had directed the staff to look at the number of amendments to the Zoning Ordinance. A number of the sections in the Zoning Ordinance date back to the mid-1950's and it is clear that they are in need of being updated. Since a number of the items that have been discussed were related, the staff decided to package together several amendments for this update. He stated that they intend to continue to look at doing larger amendments in the months ahead, to allow the Commission and staff to address multiple related issues, and to allow the entire Zoning Ordinance to be updated in a reasonable time span. He stated that this amendment continues the objective that were established in the process of updating the Zoning Ordinance. Those primarily were to update and add information in the Ordinance as necessary, to deal with current situations, to correct inconsistencies in the Ordinance and to address and accommodate the applicable provisions of state law and the Indiana Administrative Code. With those objectives in mind they have prepared the amendment before the currently Commission, which addresses the following issues. It includes an update of the Board of Zoning Appeals Section of the Ordinance and in conjunction with that it includes an update and amendment of the Contingent and Special Uses section of the Ordinance. This includes updating the section dealing with sanitary landfills and adding a section on hazardous waste treatment storage and disposal facilities. It includes an update to the Home Occupation provisions in the Ordinance. It updates the Day Care and Manufactured Home provisions, along with definitions that deal with these areas. The reason that these were packaged together, is a number of these issues deal with the Board of Zoning Appeals in one way or another. He stated that it was helpful to review them all at once and include them in a larger scale amendment. He stated that they have made some minor revisions to the original draft that was given to the Commission. He stated that basically the first two pages of the amendment deals with the Board of Zoning Appeals, as far as its organization and procedures and powers. Most of this information is currently in the Ordinance and has just been updated, there are no major revisions to that section. He stated that they did give copies of the amendment to the BZA members at their last meeting and have met with several members of the Board to review specifics of the amendment. They have also met with different representatives of the area partnerships to discuss some of the residential issues with them. He stated that they did add a purpose statement to the Contingent Use update section, to establish an overall framework for the section. He stated that Contingent Uses are basically community facilities that the Board can consider approving in any zoning district. The majority of these uses are existing in the ordinance, they did add a section for Community Facilities. They did switch Correctional Institutions, which had previously been listed as a Special Use, into the Contingent Use section. He stated that they updated under this area the section for Health Care Facilities, to address

some of the issues that they have been faced with, such as assisted living facilities, different types of retirement facilities. He stated that they still have a couple of terms in the section that he was informed was obsolete, "sanitarium" and "asylum". He stated that they may delete those two terms from that section. He stated that they did add a section for utility and commercial communication facilities. He stated that they with the Commercial Communication Facility Section they are intending to address such things as the cellular telephone towers and other fairly recent issues that has been before the staff in terms of zoning and land use. He stated that they are making more revisions to the Special Uses Section. He stated that this is being reorganized so that it is more similar to the Contingent Uses. He stated that Special Uses and a little different than Contingent Uses, both in terms of the requirements set forth in state law what the Board is supposed to consider in their approval and also in fact that Special Uses are more site specific and are typically on a smaller scale. He stated that they added provisions for Bed & Breakfast establishments, added a provision for business storage facility and that is to address the situation when a commercial establishment is on a small lot and they need to expand and have storage, either on an adjacent lot or a nearby location. He stated that storage typically is an M-1 use, they are now going to allow business storage in conjunction with a nearby business in a commercial district. He stated that they added a provision for Class II Child Care Homes, and for Country Clubs. He stated that the next major addition is for "Hazardous Waste Treatment and Storage and Disposal Facilities". He stated that this ties into another part of the proposal, Sanitary Landfills. He stated that the Hazardous Waste Treatment issue needs to be addressed, given that the city has annexed the Adams Center Landfill facility and it is currently scheduled to come in to the city's jurisdiction in 1999. He stated that we do not currently have any provisions that address that type of facility. He stated that they were aware that they needed to add language to attempt to address that facility in some manner. He stated along with the they decided to expand the Sanitary Landfill Section of the Ordinance. Currently there is a provision for Special Uses for sanitary landfills, but there is no definition of sanitary landfills and there is no guidance included for the Board when giving consideration for such a request. He stated that they sanitary landfill issue has become a little more urgent, given that the city has also annexed the United Refuse and it will becoming into the city's jurisdiction in early May of 1996. He stated that they looked at the IAC and review the requirements that the state sets up for hazardous waste and sanitary landfill disposal facilities. He stated that they had some policy decisions that they needed to make as far as how they felt locally the Board should review those issues. He stated that there are pages and pages of technical requirements in the IAC to give guidance to the state and the state also follows federal requirements, as far as the technical review and approval of these types of facilities. He stated that they did not feel that they really needed to duplicate all of those technical issues in the Zoning Ordinance. He stated that they felt it would be more appropriate for the Board to consider local issues, such as setback and other compatibility type issues. He stated that they have basically established very similar provisions for a review of the facilities. He stated that they have referenced the applicable sections of the IAC and they have pulled out some of the location requirements from the IAC, as far as setbacks for the facilities from residences, boundaries of the area used for waste treatment setback from the property line, and also indicated that the facility shall be constructed and operated in accordance with a permit issued by the appropriate governmental agencies under the Federal Resource Conservation Recovery Act. He stated that they just found out today that the IAC, as far as sanitary landfills, has been amended and some of the provisions have changed slightly. He stated that they will need to look at that amendment. He stated that they may need to revise the language somewhat as it applies to sanitary landfills. He stated that they also added items for the Board to review as part of the request, that the staff feels are

appropriate local issues; transportation and trucking routes, hours of operation, storage of materials, proposals for screening, buffering and fencing. He stated they also added one item that was brought up a number of times in the discussions regarding landfills and that being the height of the disposal facility. He stated that these items would be included in both Hazardous Waster and Sanitary Landfill facilities. He stated that another item with regard to hazardous waste, is that the state has established a "Hazardous Waste Site Approval Authority" and they are currently considering a request for the expansion of the landfill. If the Hazardous Waste Site Approval Authority approves that request, then local control over that facility is preempted. He stated that is how the state statute is setup. He stated that they have noted that fact in the Ordinance and also the fact that since they have submitted a request to the Hazardous Waste Site Approval Authority, that the review and approval of that will be under their exclusive control. He stated that it will remain under the Hazardous Waste Site Approval Authority control as long as that Authority is in existence. He stated that it has been discussed that this Authority will be phased out at some point, at which time if there were possibly additional expansion requests, they would be reviewed locally.

DeDe Hall questioned if we would be allowed in local input as to what kind of facility United Refuse can evolve into.

Mr. Fahey stated that it has been discussed, but he stated he has been unable to get an answer at this point. He stated that he would try to have an answer by the Business Meeting.

Ernest Evans questioned if the amendment would include a new facility. He stated that the amendment seems to address the expansion or major modification of an existing facility. Mr. Evans questioned if there was a specific reference, so that there would be no question that the city would have local jurisdiction over a new facility, subject to the state's preemption.

Mr. Fahey stated that the amendment would include new facilities. He stated that if the Commission feels the language is unclear they could try to clarify the language.

Mr. Fahey stated that part of the next major revision is the home based businesses information. He stated that they would look at home occupation and home based businesses together. He stated that home occupation is an issue that comes up quite often and is difficult to address, given the current provisions in the Zoning Ordinance. He stated that if a home occupation fits the requirements of the Home Occupation definition, it does not require any special BZA approval, it may simply go in as a permitted use in a residential structure. The existing definition is vague and not very helpful to staff in many cases. He stated that they wanted to create standards for home occupations and that is what is included in the amendment. He stated that they have set forth the standards to try and give guidance to staff, guidance to neighborhood associations for homeowners who call in wanting what they can do as a business out of their home. He stated that it would be required that you live on premises and the home occupation's intent only be an accessory use. He stated that they want set forth provisions that would make it clear that the intent is that it not change the character of the residence or the surrounding area. He stated in order to do that they have set forth the provisions as shown in the amendment. He stated that there be no outside employees permitted, that the use be incidental and secondary to the principal use of the dwelling as a residence. It states that a home occupation has to be located entirely within the dwelling unit, it would not be permitted to be operated from an attached or detached accessory structure or garage. It also states that only normal office

equipment be permitted. He stated that they are proposing to limit the area that a home occupation can occupy to 20% of the gross floor area of a single family residence. Also, that the home occupation would not display or create any external evidence of the operation and that no structural alterations be made to the dwelling to accommodate the operation. He stated that originally they had limited home occupations to single family residential units. He stated that in discussing it with different representatives of the area partnerships and neighborhood associations, they felt that perhaps that was too restrictive. He stated that they have purposely attempted to be restrictive with this ordinance. He stated that they felt limiting it only to single family dwelling unit, if indeed, it was not going to be offensive or create any external evidence or change the character of the area, then perhaps it could be permitted in something other than a single family residence. He stated that if the Commission is comfortable with permitting it in something other than a single family residence, they have put in a revision, that a home occupation would be permitted in a single family, a two-family or a multiple family dwelling unit. He stated that they have also addressed the issue of advertising. He stated that the intent of this provision is that clients or customers would not be permitted to come to the home, also that the address of the home not be used in the advertising. He stated though that they would not be opposed to adding an additional provision to allow for printed literature, such as brochures or business cards that could use the address of the home. He stated that is basically what the staff is proposing for the framework for home occupations. Along with that they have added two provisions under Special Uses. He stated that home based business would be a step up from the home occupations provision. He stated that the criteria would be similar, slightly less restrictive in a number of areas and identical in some areas. He stated that the intent is that a home based business would allow slightly different uses than a home occupation would allow. He stated that the main differences would be that it could occupy slightly more of the area of the home. It would be only allowed in a single or a two-family dwelling unit, and a limited number of clients or customers could come to the home. And that limited accessory retail sales could be permitted on the property. He stated that one of the reasons for limited retail sales is you could have a home based business, such as a beauty salon, and typically they would sell accessory retail items such as hair care products. In order to accommodate something like that, while still making clear that the intent is not to run a retail operation out of the home. He stated that a home based business would require a public hearing and approval by the Board of Zoning Appeals. He stated that they have listed some uses that would qualify as home based businesses as well as a list of uses that would not be considered home based businesses. He stated that along with that the third use that they wanted to create was "home workshops". He stated that a "home workshop" would also require Board approval. The intent of the home workshop is that it would allow you to create a product on the property or perhaps do some type of limited repair work on the property. He stated that a "home workshop" could be permitted in an accessory structure. He stated that they have listed some permitted home workshop as well as some prohibited home workshops. He stated that they would propose to add one other prohibited home workshop, based on some of the feedback they have received.

Ernest Evans wanted to know if he was correct in his understanding that the distinction between a home occupation and a home business, is that a home occupation could not be done in an attached garage whereas a home business could be done in an attached garage.

Mr. Fahey stated that was correct.

Mr. Evans questioned where in the amendment does it cover the issue of noise abatement that

could come from home occupation. He stated that he felt that noise would be more of a problem in a multiple family structure as opposed to a single family home.

Mr. Fahey stated that was one of the reasons that they were going to limit the uses to a single family structure. He stated that there may be that staff should add some provision for noise. He stated that the intent is that a home occupation would not create a great deal of noise.

He stated that he would just briefly go through the balance of the amendment. He stated that they did add a provision for "Indoor Shooting Ranges" as a Special Use and in that case they are proposing to add a provision to address the noise. They also added some language to the definition of "Junk & Salvage Yards" to address used tires. He stated they also have information on Manufactured Homes. He stated that a Manufactured Home Type II, which is between a Mobile Home and a Modular Home, the Board could consider it a Special Use in residential zoning districts. They have clarified the definition for all three types of manufactured homes to bring those into better conformance with state law. He stated they did revise the medical centers and clinics provisions. He stated that they moved that from the Contingent Use Section to the Special Use Section of the Ordinance. He stated that they did the same thing with Neighborhood Facilities. He stated that they have added provisions for Outdoor Recreational Facilities and Outdoor Recreational Uses. They have also added a provision for professional offices and personal services, this would be a step up from home based businesses, in that you would not live on the property. He stated that these would be permitted in R3, RA & RB Districts. He stated that typically a situation comes up where a home is located on a busy street, that maybe isn't appropriate for residential use anymore, but could be converted to an office or low intensity professional service. This provision gives the staff a mechanism between a rezoning and a Use Variance. He stated that they did add a provision for residential fencing. He stated that this would apply to a vacate lot, that wasn't adjacent to a primary residence. It would allow the Board to consider someone putting up a fence on that vacant lot. He stated that the balance of the amendments is definitions. He stated the only item he wanted to go through in definitions deal with Child Care. He stated that they have done some updating and some amendments to accommodate some changes in state law with regard to child care. He stated that the state has established a framework for child care homes. If someone is watching more than six children in their home, it is defined by the state as a Child Care Home. He stated it is further split up into Class I and Class II. The Class I Child Care Home would allow 6 to 12 children, Class II Child Care Home would allow 12 to 16 children. He stated that they are proposing that a Class I Child Care Home would be a permitted use, that is really the intent of the state law. He stated, however, that we are requiring a Class II Child Care Home be a Special Use and that would designate the number of children that could be there. He stated that there are updates to some definitions, where we are adding some definitions and deleting some definitions, and updating other definitions. He stated that is an overview of the package that has been prepared for this current amendment to the Zoning Ordinance.

Ernest Evans questioned where the Child Care Center fit in as a permitted use.

Mr. Fahey stated that the Child Care Center is intended to be a commercial use, like a day care center. It would not be someone watching children in their home. This use would require a commercial zoning classification or it could be considered by the Board as a Special Use.

Jim Federhoff, attorney, appeared before the Commission along with Harry Scott, attorney for

National Serv-All to speak to the amendment regarding Sanitary Landfills. Mr. Federhoff stated that the traditional zoning review of compatibility is an item that is proposed to be included in the text amendment, or should be included. The first component for review is whether the proposed landfill or expansion of a landfill is appropriate for a particular area. The second component is that, if the landfill is constructed and operated in accordance with existing and future state regulations, what reasonable conditions may be imposed by the Board, to insure compatibility and that the facility or expansion will not be unduly detrimental to the surrounding area. The proposed test amendment does essentially three things. It perpetuates the regulation of sanitary landfills by means of a Special Use Variance by the BZA. He stated that under the general Special Use provision there are 5 requirements that must be satisfied, with regard to sanitary landfills. Specifically, the text amendment proposes that there will be two setbacks, one 600 feet from dwellings and a setback of the fill area from the landfill facility property line of 100 feet. He stated that those two proposed setbacks were consistent with former regulations adopted by IDEM. There are also a number of other items that are listed in the proposed text amendment that the BZA may consider and can impose conditions or to approve the application. He stated that there are extensive IDEM regulations governing landfills. He stated that it has also been indicated that there are amended regulations that, we thought final, but are very near to being final. Those new regulations, that will become final shortly, impose a number of citing and setbacks requirements, that were not in existence under prior regulations. Prior regulations only had the two setbacks that he had mentioned previously. He stated that he and Harry Scott both have personal experience in local zoning approval of an expansion of a landfill facility. He stated they worked with National Serv-All for the recent expansion of its facility. Based on that experience, and other factors, and a fair amount of discussion internally among company representatives and the legal staff, they have developed a set of proposed substitute provisions for the Commission's consideration. He stated that what they have attempted to do is to identify a number of requirements, including the new setback requirements, that are applicable under the new IDEM regulations. He stated that under current Indiana law the city of Fort Wayne may impose more restrictive setback standards than those listed, as well as other setbacks, that the City Council may feel are appropriate for setbacks from other uses that are not described. He stated an example would be a setback from a public park. He stated that they have also suggested that there be a two stage hearing process. A primary approval and a secondary approval. He stated that both approvals could be combined at the insistence of the applicant, if one proceeding would be required. He stated that the reason that they feel a two step process would be appropriate is because they have found it beneficial to have the Board just issue the compatibility of a given site, before spending hundreds of thousands of dollars on engineering details. He stated with the initial feedback from the Board the applicant would be able to engage professionals to perform the necessary scientific investigations of the property. He stated that they have also proposed in their text amendment is a provision which specifically states that, if there is a more restrictive standard applicable under state law, then the more restrictive standard applies. He stated that they feel there needs to be a little "fine tuning" on the definition of sanitary landfill. He stated that he was sure that the Commission recognized that there are very serious issues that are involved in citing a new or a further expansion of any landfill in the city. He stated that they are suggesting careful consideration needs to be given to the Zoning Ordinance provisions that will govern that type of use. He stated that he was aware that the voluntary annexation of United Refuse will become effective in the early part of May of 1996. He stated though that just because the annexation becomes effective in early May of this year, does not mean that these text amendments need to be rushed through the process without careful consideration. He stated that they feel that having specific requirements in the

Ordinance, for all applicants, is beneficial. It works to the advantage of, not only the applicant, but also the government and the community, by clearly describing requirements and procedures for creation of new sanitary landfills and expansion of existing landfills.

Harry Scott, attorney, appeared before the Commission. Mr. Scott stated that the suggested provisions that they are suggesting the Plan Commission recommend for adoption, were very carefully thought out and put together with the new regulations. He stated that the reason for the new standards that are set up in the provisions they have submitted, is to make clear to anyone who wants to put a landfill in the city of Fort Wayne, that they are going to have to comply with these requirements. He stated that the items they have set out with regard to the setbacks and the minimum size are just the beginning. He stated that those are just the minimum requirements that IDEM requires as of now. He stated that the Commission may decide to, and he recommended that the Commission carefully consider these setbacks, and incorporate additional requirements in the amendments. He stated that all of the requirements of IDEM are minimum requirements, so all of the items they list are within the consideration of the Commission to change. He stated IDEM does not really care about where it is or the noise or traffic, etc. He stated that IDEM cares if it is constructed properly, is it draining properly, etc. He stated that the Commission should consider that unless a landfill is fenced properly and unless you have proper mounding, there will be problems, wherever it is located. Mr. Scott stated that he strongly suggested that the Commission carefully examine the minimum requirements that they are going to recommend to City Council. He stated that the Commission made want to add requirements to the current text. He stated they may want to increase the requirements, because what is shown is the minimum requirements of IDEM.

Linda Buskirk questioned if the list of setback requirements come from IDEM and are identical to their latest requirements. Ms. Buskirk questioned what would happen if IDEM changes there requirements.

Mr. Scott stated if IDEM's setbacks were more restrictive the more restrictive would control. He stated however that if the City's is more restrictive they would control.

Lavinia Taylor, appeared before the Commission with questions regarding the Child Care amendment to the ordinance. Ms. Taylor was concerned about the statement that no structural changes would be allowed to any home occupation. She stated that for handicapped children some alterations are needed. She also questioned where it stated that no outside employees were permitted. She stated that it is almost impossible to not have an help, depending on the number of children you are watching.

Pat Fahey asked Ms. Taylor to describe her type of day care.

Ms. Taylor stated that it was a home day care facility.

Mr. Fahey stated that she would not be considered a home based business. He stated that he did not feel she would be subject to the restrictions she was speaking about. He stated that he would be happy to speak with her after the meeting and clarify any of her confusion with the amendment. He stated that a Class I Child Care Home (6 to 12 children) is a permitted use in a residential district and is not classified as a Home Based Business.

Stan Phillips questioned Mr. Fahey with regard to home based businesses that does not permit any employees. He stated that in the advent of this terminology in today's society he questioned if he could consider adding, if there are no employees permitted, no independent contractors or consultants. He stated that it is a matter of semantics what people call each other.

Pat Fahey questioned if he wanted that added for clarification.

Mr. Phillips stated that would be for clarification purposes. He also questioned that with the subject of no alterations would be allowed to a structure having a home based business, did the staff take into consideration that some alterations may be required by the ADA compliance act. He questioned if that national act would supersede all these things in the amendment.

Mr. Fahey stated that the intent of the structural alteration would be for the addition of, like a separate entrance or the addition to a building specifically for the business.

Mr. Phillips questioned what about handicapped ramps.

Mr. Fahey stated he was not sure he could answer whether the ADA act would supersede in areas such as handicapped ramps. He stated that if he were to give an opinion, he would say the ADA requirement would supersede the Ordinance in certain cases.

David Wright stated that he felt that the ADA requirements would apply to a home based business, although it does not apply to a residence.

Linda Buskirk questioned if a beauty salon is a home based business, as has been indicated. She stated that this type of home based business is usually very low volume, one or two clients at a time. If they could be required to meet ADA code, might it be advisable to add something to the Ordinance amendment regarding structural changes. Something to the effect that states "that except those structural changes required by the American Disabilities Act". She stated that if there is a neighborhood dispute and a neighborhood business is allowed and the business is required to alter the structure, to meet ADA code, this would meet that requirement.

Linda Buskirk questioned what is going to happen to the landfill amendment with the new changes in state law that were put in place in February.

Pat Fahey stated that is an approach that could be taken as far as provisions for a sanitary landfill. He stated that if they are proposing more standards and a two step approval process. He stated that the philosophical that staff had taken was to not try to do the technical review. He stated that they have concerns as to whether BZA would have that kind of expertise. He stated that he felt staff does not have that kind of expertise to review the technical issues. He stated that is the reason from a philosophical standpoint that the Ordinance amendment is set up. He stated that they will look to the Commission and Council to see if they would agree with that philosophical approach or whether they want them to look at some of these other standards. He stated that it is really up to the Commission to direct the staff as to how they would want them to proceed on the amendment.

Gary Stair, Director of Planning, with Community & Economic Development appeared before the Commission. Mr. Stair stated that he liked the idea philosophically, and they have discussed

with various people in the administration, of reference the IAC, in the Zoning Ordinance. He stated also putting in there as it may be amended (IAC). He stated that otherwise you get into a situation where the code gets amended periodically and we are constantly having to go through the process of amending the Zoning Ordinance.

Ernest Evans questioned if the State preemption applied only to hazardous waste and not to sanitary landfills.

Mr. Fahey stated that was correct at this point.

Linda Buskirk asked if they were trying to get information from the state as to what would be allowed in a sanitary landfill.

Mr. Fahey stated that he was seeking that information from the state, because he was not sure that the Board would be allowed to limit what could go into a sanitary landfill and for hazardous waste disposal.

Linda Buskirk questioned if there were any provisions currently in the Ordinance when "working" farms are annexed to the city.

Mr. Fahey stated that it is a separate issue that is not being addressed with this amendment. He stated it is not a Board of Zoning Appeals issue. He stated that he would be glad to go over the issue with Ms. Buskirk after the meeting.

Stan Phillips questioned that with all of the information set out in this meeting and with 3 members not present, what are the mechanics of the Commission being able to vote on this amendment next Monday night. He stated that some of the information given at the meeting was even new to staff. Mr. Phillips questioned if there was a way for the Commission to open the discussion on this amendment back up on Monday night at the Business Meeting.

Ernest Evans said that there will not be an opportunity for further public input at the Business Meeting.

David Wright stated that the Commission has the right to discuss the issue and to ask questions of the public at the meeting.

DeDe Hall requested that Pat Fahey and Gary Stair to address the situation if the Commission is delayed for a month in making a decision on this amendment. She questioned what the situation would be of having a land fill come into the city with out this amendment in place.

Mr. Stair stated that they have a couple of options. He stated that if the Commission does not act on the amendment until the April meeting it could potentially still get to the Council in time for action before May 6. He stated that the Council might have to take special action in order to act on the amendment. He stated that there is also a possibility that you could defer action and advertise for an earlier business meeting in order to act on it in time for it to go to City Council.

Mr. Fahey stated that from the staff standpoint, they are going to need some guidance on what

the Commission would like the staff to do with the current ordinance. He stated that there has been a proposal to amend this ordinance, although it has come from someone who is not a member of the Plan Commission. He stated that the staff needs some kind of direction as to whether the Commission feels the staff should look into amending the ordinance or whether you prefer to leave the ordinance the way it has been presented. He stated that they will have to look at the setback issued, the only reference they make to the state statute, has changed. He stated they do not however have to look at the other issues suggested by Mr. Federhoff and Mr. Scott, unless the Commission so dictates.

Ernest Evans stated that he felt that it would be worth the staff's time to look into the issues presented by Mr. Federhoff and Mr. Scott.

DeDe Hall stated that she would like an opinion from the staff's point of view on the information that was presented by Mr. Federhoff and Mr. Scott.

Mr. Stair stated that they will look at the issues presented by Mr. Federhoff and Mr. Scott and will put together some recommendations for the Business Meeting. He stated that they can put together two different approaches. One the way the staff originally presented the amendment, with some modifications and the one they heard from Mr. Federhoff.

There was no one else present who spoke in favor of or in opposition to the proposed amendment.

RESOLUTION OF ZONING ORDINANCE TEXT AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on March 12, 1996 referred a proposed text amendment which proposed amendment was designated as Bill No. G-96-03-04; and,

WHEREAS, the required notice of public hearing on such proposed amendment has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed amendment on March 18, 1996.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this amendment be returned to the Common Council with a DO PASS recommendation based on the Commission's following "Findings of Fact".

(1) the grant will not be injurious to the public health, safety, morals, and general welfare of the community;

(2) the grant does not interfere substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law;

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resolution adopted at the meeting of the Fort Wayne City Plan Commission held March 26, 1996.

Certified and signed this
11th day of April 1993.



Carol Kettler Sharp
Secretary

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BILL NO. G-96-03-04 (AS AMENDED)

ZONING MAP ORDINANCE NO. G-03-96

AN ORDINANCE amending the City of
Fort Wayne Zoning Ordinance.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

Sections 157.130 (Organization), 157.131 (Procedure), 157.132 (Powers), and
157.133 (Zoning Hearing Officer) of the Board of Zoning Appeals subchapter are
hereby repealed and replaced with the following.

§ 157.130 ORGANIZATION.

The Board of Zoning Appeals, as presently constituted, is hereby continued as an
advisory Board of Zoning Appeals, subject to and in accordance with the
provisions of IC 36-7-4-900 Series, et. al.

('74 Code, §33-26) (Ord. G-06-80, passed 3-11-80)

§ 157.131 PROCEDURE.

The procedure of the Board of Zoning Appeals shall be governed by the
provisions of IC 36-7-4-900 Series, et. al. The Board shall adopt rules and
procedures concerning the filing of appeals, the giving of notice, and the conduct
of its hearings and operations as necessary to carry out its duties. It shall keep
minutes and records of its meetings and official actions, prepare written findings,
and record the vote of all actions taken. All minutes and records of the Board
shall be public records.

('74 Code, §33-27) (Ord. G-06-80, passed 3-11-80; Am. Ord. G-09-84, passed
5-15-84)

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2 **§ 157.132 POWERS.**

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- 4 (A) The Board of Zoning Appeals shall hear and take action on appeals of:
- 5 (1) any order, requirement, decision, interpretation, or determination
6 made by an administrative official, hearing officer, zoning
7 enforcement officer, or staff member under this chapter; and
- 8 (2) any order, requirement, decision, interpretation, or determination
9 made by an administrative board or other body, except the Plan
10 Commission, in relation to the enforcement of this chapter.
- 11
- 12 (B) Upon appeal, the Board may reverse or affirm, or may modify the
13 appealed order, requirement, decision, interpretation, or determination. For
14 this purpose the Board has all powers of the official, officer, board or body
15 from which the appeal is taken.
- 16
- 17 (C) The Board shall approve or deny all of the following uses and/or requests.
18 In all cases, the Board may impose reasonable conditions as part of its
19 approval.
- 20 (1) Contingent uses (§157.031), if the Board determines that:
- 21 (a) the proposed use is essential and desirable to the public
22 convenience or welfare; and
- 23 (b) the proposed use does not conflict with the comprehensive
24 plan or any other plan duly adopted by ordinance by the
25 Fort Wayne Common Council.
- 26 (2) Special uses (§157.032), if the Board determines that:
- 27 (a) the public convenience and welfare will be substantially
28 served;
- 29 (b) the proposed use will not be unduly detrimental to the
30 surrounding area;
- 31 (c) the nature, location, size and site layout of the use will be
32 compatible with the immediate area;
- 33 (d) vehicular traffic to and from the proposed use will not

create undue hazards to normal traffic in the vicinity of the request; and

- (e) the proposed use does not conflict with the comprehensive plan.

- (3) Variance of the permitted use provisions of this chapter, pursuant to IC 36-7-4-918.4, if the Board determines that:

- (a) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;

- (b) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

- (c) the need for the variance arises from some condition peculiar to the property involved;

- (d) the strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and

- (e) the approval does not interfere substantially with the comprehensive plan.

- Variances from the development standards of this chapter, pursuant to IC 36-7-4-918.5, if the Board determines that:

- (a) the approval will not be injurious to the public health, safety, morals, and general welfare of the community;

- (b) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and

- (c) the strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.

- (5) Conditional uses or other approvals as provided for in this chapter.

(D) Any appeal or request filed under this section shall be subject to all

1
2 applicable procedures and limitations the Board may establish by rule.
3
4 ('74 Code, §33-28) (Ord. G-06-80, passed 3-11-80; Am. Ord. G-09-84,
5 passed 5-15-84)

6 **§ 157.133 ZONING HEARING OFFICER.**

7 The Plan Commission may authorize the creation of a hearing officer for the type
8 of cases and in accordance with the procedures outlined in IC 36-7-4-923 and
9 IC 36-7-4-924.

10 ('74 Code, §33-29) (Ord. G-09-84, passed 5-15-84)

11 Sections 157.030 (Conformance with provisions required), 157.031 (Contingent uses),
12 and 157.032 (Special uses) of the District Regulations subchapter are hereby repealed
13 and replaced with the following.

14 **§ 157.030 PURPOSE.**

15 The purpose of this subchapter is to carry out the general purpose and intent of the
16 Zoning Ordinance, and in doing so to:

- 17 (A) establish uses that the Board of Zoning Appeals may permit as contingent uses
18 and special uses, along with the zoning districts where special uses will be
19 allowed;
- 20 (B) set forth the uses permitted in the City's residential, commercial, and industrial
21 districts;
- 22 (C) establish other permitted and prohibited land uses;
- 23 (D) establish minimum standards for lot areas and sizes, yard requirements, and
24 residential building sizes;
- 25 (E) establish maximum building and/or structure heights and maximum residential
26 lot coverage standards;
- 27 (F) establish standards for accessory construction such as garages, sheds, fences, and
28 similar structures and uses; and

(G) establish review and approval procedures for development plans.

§ 157.031 CONTINGENT USES.

The following contingent uses may be permitted by the Board of Zoning Appeals in any zoning district if the Board determines that the request meets the requirements of §157.132(C)(1). As part of its approval, the Board may impose reasonable conditions regarding the location, site design, and other features of the proposed building, structure, use, or site development as are reasonably related to the purposes of this chapter.

- (A) **Airports** (public and private), including accessory structures and uses.
 - (B) **Cemeteries** (public and private), including accessory uses such as crematories, mausoleums, and/or mortuaries.
 - (C) **Community facilities** such as a botanical garden/conservatory, library, planetarium, public transportation facility, museum, zoo, or similar use.
 - (D) **Correctional institutions.**
 - (E) **Educational institutions** not otherwise permitted.
 - (F) **Golf courses**, including accessory uses such as driving ranges and/or maintenance and clubhouse facilities.
 - (G) **Group residential facilities**, provided the use will not be unduly detrimental to the surrounding area because of number of residents, noise, vehicle traffic, parking, or other similar activity.
 - (H) **Health care facilities**, such as a hospital, nursing home, assisted living facility, or similar facility.
 - (I) **Heliports** (public and private), as a primary or accessory use.
 - (J) **Public or employee parking areas**, when used as an accessory use to a conforming or a legal nonconforming use and located within 300 feet of the main use or structure on an adjacent or detached lot, subject to the requirements of §157.105 through §157.118.
 - (K) **Utility and commercial communication facilities** such as:

- 1
- 2 (1) electric substations and telephone exchanges;
- 3 (2) radio, television, telephone, or similar transmitter stations and towers, as a
4 primary or accessory use. However, a contingent use permit shall not be
5 required for a commercial communication tower which would be an
6 accessory use to a permitted primary use, provided the tower does not
7 exceed the height requirement of the zoning district in which it is proposed
8 or 75 feet (whichever is less); and
- 9 (3) other similar uses of a public utility or public service nature, including
10 structures and accessory uses as needed.

11

12 ('74 Code, §33-12) (Ord. G-06-80, passed 3-11-80; Am. Ord. G-44-92, passed
13 10-13-92)

14

15 **§ 157.032 SPECIAL USES.**

16

17 The following special uses may be permitted by the Board of Zoning Appeals, in the
18 zoning districts specified in this section, if the Board determines that the request meets
19 the requirements of §157.132(C)(2). As part of its approval, the Board may impose
20 reasonable conditions regarding the location, site design, and other features of the
21 proposed building, structure, use, or site development as are reasonably related to the
22 purposes of this chapter. In reviewing a petition for any special use, the Board shall
23 also consider the location and size of the use; the nature and intensity of the
24 operations involved in or conducted in connection with it; and its site layout, including
25 access provisions and parking requirements. See the table at the end of this section
26 for a reference list of permitted special uses and the zoning districts where the special
27 uses are allowed.

- 28
- 29 (A) **Animal raising or breeding** for laboratory uses, fur or scent production, or
30 other similar non-food production purposes (as distinguished from general
1 livestock raising), may be permitted by the Board in B1A, B1B and B3B
2 Districts.
- 3 (B) **Bed and breakfast establishments** may be permitted by the Board in R3, RA
4 and RB Districts.
- 5 (C) **Business storage facilities** may be permitted by the Board in B3B and B4
6 districts. The facility shall be used as an accessory use to a conforming
7 commercial or industrial use located on the same or detached lot or tract,

1
2 provided that all material storage at the facility shall be located within an
3 enclosed structure.

- 4 (D) **Class II child care homes** may be permitted by the Board in R1, R2, R3, RA
5 and RB Districts.
- 6 (E) **Country clubs** may be permitted by the Board in R1, R2, R3, RA and RB
7 Districts. A country club may include related accessory and/or recreational uses
8 such as a golf course.
- 9 (F) **Fairgrounds** may be permitted by the Board in B1A, B1B, B3A and B3B
10 Districts.
- 11 (G) **Funeral homes** may be permitted by the Board in R1, R2, RA and RB Districts.
- 12 (H) **Hazardous waste treatment, storage, and/or disposal facilities** may be
13 permitted by the Board in M2 and M3 Districts. A special use is required for
14 a new hazardous waste treatment, storage, and/or disposal facility; or an
15 expansion of an existing facility, where the proposed waste disposal area has not
16 been previously approved by the Board or other applicable zoning authority. In
17 addition to meeting the requirements of §157.132(C)(2), the proposal shall be
18 reviewed subject to and constructed in accordance with the provisions of 329
19 IAC 3.1 or any subsequent applicable revisions, shall be constructed and operated
20 in accordance with a permit issued by the appropriate government agency
21 authorized by or under the Resource Conservation and Recovery Act (40 CFR
22 260 - 40 CFR 270, 42 U.S.C. 6901, et seq., and IC 13-7-8.5 et. seq.), and shall
23 meet the requirements listed in this section.
- 24 (1) **Area, setback, and location requirements.** The proposed facility shall
25 meet the following requirements:
- 26 (a) the total land area of a new facility shall be at least 50 acres;
- 27 (b) any lateral expansion of an existing facility shall be located on land
28 which is contiguous to the existing facility site; otherwise, the request
29 shall be considered as a new facility;
- 30 (c) the hazardous waste disposal area of a facility must comply with the
 following setback restrictions, and shall not be located within:
 1. 200 feet of the property lines of the facility;

2. 2,640 feet of a public or private school or educational institution;
3. 900 feet of a dwelling;
4. 1,000 feet of a drinking water supply reservoir that is being used
5. as a drinking water supply for humans;
6. 200 feet of a continuously flowing river or stream; and
7. 600 feet of any commercial or industrial structure.

8 Where these provisions require a setback from a structure, that structure
9 must be in existence as of the date of the public notice for Board of Zoning
10 Appeals consideration of the request.

- 11 (2) **Review requirements.** As a part of its review of the request, the Board
12 will also consider other applicable issues, including but not limited to the
13 following:
 - 14 (a) the location and construction of entrances and roadways proposed to
15 serve the facility, including provisions for dust, litter, noise, and mud
control;
 - 16 (b) transportation and trucking routes to and from the facility;
 - 17 (c) hours of operation;
 - 18 (d) proposals for recycling or similar operations;
 - 19 (e) proposals for quantities, types, and sources of materials to be accepted,
20 along with proposals for storage of materials;
 - 21 (f) proposals for the provision of screening, buffering, and fencing
22 between the facility and adjacent structures and uses; and
 - 23 (g) the proposed height of the hazardous waste disposal area of the
24 facility.
- 25 (3) As long as the Indiana Hazardous Waste Site Approval Authority is in
26 existence, any request to establish, expand, or modify a hazardous waste
27 treatment, storage, and/or disposal facility shall be under the exclusive
28 control of that authority to review and determine. Approval by the Board
29

1
2 shall not be required if a facility has received approval from the State as set
3 forth in IC 13-7-8.6 or any subsequent applicable revisions and, as part of
4 that approval, local zoning and land use control over the facility is
specifically pre-empted.

5 (4) Before a certificate of compliance may be issued for a new hazardous waste
6 treatment storage and/or disposal facility; or an expansion of an existing
7 facility, the owner or operator of the facility shall submit documentation to
8 show that all necessary permits required under applicable federal, state, and
9 local laws, ordinances, and regulations have been obtained. If the
10 documentation is not filed the certificate of compliance shall not be issued.
If at any time during the operation of the facility a required permit is
revoked or suspended, the Zoning Enforcement Officer may revoke the
certificate of compliance for the facility, and take any other enforcement
action permitted under this chapter.

11 (I) **Home-based businesses** may be permitted by the Board in R1, R2, R3, RA and
12 RB Districts. In addition to meeting the criteria established in §157.132(C)(2),
13 the home-based business shall meet the following requirements:

- 14 (1) the business shall only be operated by residents of the dwelling; no outside
15 employees shall be permitted;
- 16 (2) the business shall not change the residential character of the structure or
immediate area;
- 17 (3) the business must be incidental and secondary to the principal use of the
dwelling as a residence, and must be conducted entirely within the dwelling
18 or attached garage. No home-based business shall be operated from a
detached accessory structure;
- 19 (4) the business shall use only normal office equipment, including but not
20 limited to a typewriter, computer, calculator, fax machine, or copier.
Equipment noise shall not be permitted to adversely affect adjacent
21 properties;
- 22 (5) the business shall not occupy more than 25% of the gross floor area of the
dwelling unit, including any space used for storage for the business. All
storage related to the business use shall be contained within the dwelling or
23 attached garage;
- 24 (6) the business shall not display or create any external evidence of the
25

1
2 business, except that a single vehicle, used in conjunction with the business,
3 may be parked outside and may display advertising or a logo. The vehicle
4 shall comply with the restrictions listed in §72.23 of the City Code;

- 5 (7) no structural alterations shall be made to the dwelling unit to accommodate
6 the business. No separate entrances or building additions shall be added for
7 the use of the business;
- 8 (8) a home-based business shall not be permitted in a multiple family dwelling
9 with three or more dwelling units;
- 10 (9) only one (1) business shall be permitted per lot or tract, and the Board may
11 approve the business for use by the current resident/applicant only;
- 12 (10) there may be a limited number of clients or customers who come to the
13 home; the number may be established by the Board.
- 14 (11) retail sales shall not be permitted on the property; except that as part of its
15 consideration of the request, the Board may permit limited retail sales as an
16 accessory use;
- 17 (12) wall and freestanding signage shall not be permitted in association with the
18 home-based business, and the address of the home may not be used to
19 advertise the business except for advertising such as printed literature or
business cards; and
- 20 (13) as part of its review of a request for a home based business, the Board may
21 consider any existing plat or deed restrictions limiting the uses of the
22 property included in the request.

23 **Permitted home-based businesses.** Permitted home-based businesses shall
24 include but not be limited to:

- 25 (1) accounting or bookkeeping office;
26 (2) architect, engineer, land surveyor, or other similar office;
27 (3) massage therapy;
28 (4) one-chair beauty salon, barber shop, nail salon, or similar use;
29 (5) photography studio;

- (6) psychic reading business;
 - (7) real estate, insurance, law, or similar office;
 - (8) seamstress or tailor; and
 - (9) teaching/tutoring, including music lessons.

Prohibited home-based businesses. Prohibited home-based businesses shall include but not be limited to:

- (1) amusement enterprises of any public nature;
 - (2) animal grooming, animal kennel, or pet shop; and
 - (3) production, manufacturing, assembly, or repair of products or components of products.

(J) **Home workshops** may be permitted by the Board in R1, R2, R3, RA and RB Districts. In addition to meeting the criteria established in §157.132(C)(2), the workshop shall meet the following requirements:

- (1) the person operating the home workshop shall be a resident of the premises; no outside employees shall be permitted;
 - (2) in no case shall a home workshop be allowed in an accessory structure prior to the occupancy of the principal dwelling on the lot, parcel, or tract of land;
 - (3) the workshop shall not change the residential character of the structure or immediate area;
 - (4) the workshop must be incidental and secondary to the principal use of the dwelling as a residence, and must be conducted entirely within the dwelling, attached garage, or accessory structure located on the same lot or tract;
 - (5) the workshop shall use only that equipment appropriate for small scale enterprises. Equipment noise shall not be permitted to adversely affect adjacent properties. As part of the application the applicant shall include a list of any equipment proposed to be used as part of the operation of the home workshop for review and approval by the Board;

- (6) the workshop shall not occupy more than 25% of the gross floor area of a single family residence, or 50% of the gross floor area of an accessory structure, including any space used for storage for the workshop. All storage related to the use of the workshop shall be contained within the dwelling or accessory structure;
 - (7) the business shall not display or create any external evidence of the business, except that a single vehicle, used in conjunction with the business, may be parked outside, and may display advertising or a logo. The vehicle shall comply with the restrictions listed in §72.23 of the City Code;
 - (8) no separate entrances or building additions shall be added to the dwelling unit or attached garage for the use of the workshop;
 - (9) a home workshop shall not be permitted in a two family or multiple family dwelling unit, or in an accessory structure on the same lot or tract as a two family or multiple family dwelling;
 - (10) only one (1) home workshop shall be permitted per lot or tract, and the Board may approve the workshop for use by the current resident/applicant only;
 - (11) there may be a limited number of clients or customers who come to the home; the number may be established by the Board;
 - (12) retail sales shall not be permitted on the property; except that as part of its consideration of the request, the Board may permit limited retail sales as an accessory use; and
 - (13) wall and freestanding signage shall not be permitted in association with the home workshop, and the address of the home may not be used to advertise the workshop except for advertising such as printed literature or business cards; and
 - (14) as part of its consideration of a request for a home workshop, the Board may consider any existing plat or deed restrictions limiting the uses of the property included in the request.

Permitted home workshops. Permitted home workshops shall include but not be limited to:

- (1) ceramics/pottery making or similar crafts;

- 1
- 2 (2) copy and duplicating service;
- 3 (3) small electronic equipment repair such as televisions and video cassette
- 4 recorders; and
- 5 (4) woodworking.

6 **Prohibited home workshops.** Prohibited home workshops shall include but not

7 be limited to:

- 8 (1) amusement enterprises of any public nature;
- 9 (2) animal grooming, animal kennel, or pet shop;
- 10 (3) cabinet or furniture making;
- 11 (4) mechanical or body repair of automotive vehicles, other than routine
- 12 maintenance and minor repair of personal motor vehicles titled to the
- 13 occupants of the property; and
- 14 (5) small engine repair.

15 (K) **Indoor shooting ranges** may be permitted by the Board in B1A and B1B

16 Districts, provided the range shall be constructed so as to prevent any danger

17 from firearms to persons or property outside the facility. Noise from the facility

18 shall not adversely affect adjacent properties.

19 (L) **Junk and salvage yards** may be permitted by the Board in M3 Districts

20 provided that the following conditions are met:

- 21 (1) no portion of the property used as a junk and/or salvage yard shall be
- 22 located any closer than 300 feet from any city or county residential zoning
- 23 district;
- 24 (2) all outdoor storage shall be located entirely within an enclosed seven-foot-
- 25 high opaque visual barrier, except for driveway openings onto public streets
- 26 or alleys. At such openings, the screen shall extend perpendicular to the
- 27 perimeter screen a distance equal to the gap in the perimeter screen on each
- 28 side of the opening;
- 29 (3) the opaque visual barrier shall be constructed along the front, side and rear
- 30 lot lines and shall be constructed in such a manner that no outdoor storage

1
2 or salvage material shall be visible from an adjacent property. Any storage
3 between the visual barrier and any property line is prohibited;

- 4 (4) a minimum lot area of five acres shall be required for any junk and salvage
5 yard. The minimum dimension across the lot in any direction between two
6 parallel or substantially parallel lot lines shall not be less than 300 feet;
7
8 (5) no junk and salvage yard shall be located in any designated floodplain
9 and/or wetland areas; and
10
11 (6) the junk and salvage yard shall comply with all applicable fire and building
12 codes.

13 (M) **Manufactured homes (Type II)** may be permitted by the Board in R1, R2, R3,
14 RA and RB Districts. In reviewing the request, the Board shall consider whether
15 the proposed home is:

- 16 (1) comparable with the existing housing pattern in the immediate area with
17 regard to density and setbacks, and in compliance with the applicable
18 minimum standards and requirements of this chapter; and
19
20 (2) constructed with roofing and siding materials which are similar to the
21 existing homes in the immediate area.

22 If the Board determines the proposed home meets both the criteria established
23 above and the criteria established for special uses in §157.132(C)(2), the request
24 shall be granted.

25 (N) **Medical centers or clinics** may be permitted by the Board in R3, RA and RB
26 Districts, provided the Board finds the proposed use will be compatible with the
27 neighborhood or area in which it is to be located.

28 (O) **Municipal solid waste landfill facilities** may be permitted by the Board in M2
29 and M3 Districts. A special use is required for a new municipal solid waste
30 landfill; or an expansion of an existing facility, where the proposed waste
31 disposal area has not been previously approved by the Board or other applicable
32 zoning authority. In addition to meeting the requirements of §157.132(C)(2), the
33 proposal shall be reviewed subject to and constructed in accordance with the
34 provisions of 329 IAC 10 or any subsequent applicable revisions, shall be
35 constructed and operated in accordance with permits issued by the appropriate
36 government agencies, and shall meet the requirements listed in this section.

1
2 (1) **Area, setback, and location requirements.** Under the provisions of 329
3 IAC 10, a municipal solid waste landfill facility is subject to the location
4 restrictions listed under 329 IAC 10-16, and shall meet the following
requirements:

- 5 (a) the total land area of a new facility shall be at least 50 acres;
6 (b) any lateral expansion of an existing facility shall be located on land
7 which is contiguous to the existing facility site; otherwise, the request
8 shall be considered as a new facility;
9 (c) the waste disposal area of a landfill facility must comply with the
following setback restrictions, and shall not be located within:
10 1. 200 feet of the property lines of the facility;
11 2. 2,640 feet of a public or private school or educational institution;
12 3. 900 feet of a dwelling;
13 4. 1,000 feet of a drinking water supply reservoir that is being used
as a drinking water supply for humans;
14 5. 200 feet of a continuously flowing river or stream; and
15 6. 600 feet of any commercial or industrial structure.
16
17

18 Where these provisions require a setback from a structure, that structure
19 must be in existence as of the date of the public notice for Board of Zoning
Appeals consideration of the request.

20 (2) **Review requirements.** As a part of its review of the request, the Board
21 will also consider other applicable issues, including but not limited to the
22 following:

- 23 (a) the location and construction of entrances and roadways proposed to
serve the facility, including provisions for dust, litter, noise, and mud
control;
24 (b) transportation and trucking routes to and from the facility;
25 (c) hours of operation;

- (d) proposals for recycling or similar operations;
 - (e) proposals for quantities, types, and sources of materials to be accepted, along with proposals for storage of materials;
 - (f) proposals for the provision of screening, buffering, and fencing between the facility and adjacent structures and uses; and
 - (g) the proposed height of the waste disposal area of the landfill facility.

(3) Before a certificate of compliance may be issued for a new municipal solid waste landfill facility; or an expansion of an existing facility, the owner or operator of the facility shall submit documentation to show that all necessary permits required under applicable federal, state, and local laws, ordinances, and regulations have been obtained. If the documentation is not filed the certificate of compliance shall not be issued. If at any time during the operation of the facility a required permit is revoked or suspended, the Zoning Enforcement Officer may revoke the certificate of compliance for the facility, and take any other enforcement action permitted under this chapter.

Neighborhood facilities or uses, such as not-for-profit neighborhood educational, recreational, or cultural facilities including, but not limited to a branch YMCA, YWCA, Boys and Girls Club, or Boy Scout or Girl Scout facility, may be permitted by the Board in R1, R2, R3, RA and RB Districts provided the Board finds that it will be compatible with the character of the neighborhood or area in which it is to be located. However, the dispensing of alcoholic beverages on the premises shall not be permitted.

Off-premise signs may be permitted by the Board in B1A, B1B, B3B, B4, M1, M2 and M3 Districts, except for properties within the Central Business District, to be between a 125 foot radius and a 350 foot radius from any city or county residential district, church, school, health care facility, historic district, designated historic structure, or property eligible for historic designation consistent with the following chart.

(1) In considering such a request, the Board will evaluate the height, location, and sightlines of the proposed sign and consider whether the sign would adversely affect the character of residential districts, churches, schools, health care facilities, designated historic structures, historic district, or property eligible for historic designation. The Board may impose reasonable conditions on the size, location, height and lighting of such a

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2 sign, to address any negative impact on the areas or uses noted above. Off-
3 premise signs adjacent to historic districts, designated historic structures, or
4 properties eligible for historic designation shall be located to ensure that all
5 sightlines and vistas of historic features are maintained, and that such signs
shall not negatively affect the historic integrity of such properties or
structures.

- 6 (2) Concurrent with filing the petition with the Board of Zoning Appeals, the
7 petitioner shall send a notice describing the proposal along with the date
8 and time of the hearing to all property owners within a 350 foot radius of
9 the petitioned location and any registered neighborhood associations having
boundaries on the site and within a 350 foot radius of the site. A copy of
the mailing list shall be submitted with the petition.

Off-Premise Signs Authorized for Special Uses				
Zoning District	Maximum Sign Size (sq. ft.)	Maximum Height (feet)	Minimum Setback (feet)	Distances from Residential/Historic District, School, etc. (feet)
B1A & B1B	100	35	15	125 – 350
B3B	100	35	15	125 – 350
B4	300	35	20	125 – 350
M1	100	35	15	125 – 350
M2	300	35	20	125 – 350
M3	675	35	30	250 – 350

- 20 (R) **Outdoor recreational facilities** such as a golf driving range, miniature golf
course, batting cage, or other similar uses may be permitted by the Board in
21 B1A, B1B and B3B Districts.
- 22 (S) **Outdoor recreational uses** such as softball/baseball diamonds and/or soccer
fields; or similar private outdoor recreational uses, as a principal use of the
23 property, may be permitted by the Board in R3, RA and RB Districts.
- 24 (T) **Professional offices and personal services** may be permitted by the Board in
25 R3, RA and RB Districts. This use shall include services as described below,
26 where the service is proposed to be provided from a location which is not the
primary residence of the person(s) providing the service. It shall also include

1
2 services which are operated in a way which prevents their being classified as a
3 home occupation or home-based business. The Board may approve the business
4 for the current resident/applicant only. Permitted offices and services shall
5 include, but not be limited to:
6
7 (1) adoption service;
8
9 (2) advertising office;
10
11 (3) architect, engineer, land surveyor, or similar office;
12
13 (4) artist studio or school;
14
15 (5) bank, credit union, or savings and loan association;
16
17 (6) barber shop;
18
19 (7) beauty salon;
20
21 (8) child and/or adult care center;
22
23 (9) consulting service;
24
25 (10) counseling service,
26
27 (11) dance studio or school;
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29 (12) dentist office;
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31 (13) doctor office;
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33 (14) finance office;
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35 (15) insurance office;
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37 (16) interior designer office;
38
39 (17) law office;
40
41 (18) loan office;
42
43 (19) massage therapy establishment;

- (20) medical related services;
 - (21) nail salon;
 - (22) optician or optometrist office;
 - (23) professional or commercial office not otherwise listed;
 - (24) real estate, broker, or appraiser office;
 - (25) stockbroker office; and
 - (26) tanning salon.

(U) **Railroad switching yards for truck trailers** may be permitted by the Board in M1, M2 and M3 Districts.

(V) **Residential fencing** may be permitted by the Board in R1, R2, R3, RA and RB Districts as the principal use of a residential lot or tract. The fencing shall be located within 200 feet of the lot owners primary structure. As part of its review of the request, the Board may also consider:

- (1) the height, location, and materials of the proposed fencing;
 - (2) the location of structures on adjacent lots; and
 - (3) granting a waiver of the required front yard setback.

(W) **Self-service storage (mini-warehouse) facilities** may be permitted by the Board in B3B and B4 Districts, provided that the following requirements are met:

- (1) the facility must have direct access to an arterial or collector street;
 - (2) the use shall be limited to self-service personal storage only; and
 - (3) landscaping shall be provided to adequately screen the structures and parking areas from any adjacent residential zoning district or residential use. The screening shall be at least 6 feet in height. The Board may also permit or require perimeter fencing for the site.

(X) **Temporary facilities** such as mobile office units or similar temporary facilities permitted under §157.004, may be granted an extension of time by the Board for continuation of use.

SPECIAL USES AND DISTRICTS ALLOWED

	SPECIAL USE	DISTRICT(S)
1		
2	Adoption service	R3, RA, and RB
3	Advertising office	R3, RA, and RB
4	Animal raising or breeding (non-food production)	B1A, B1B and B3B
5	Architect office	R3, RA and RB
6	Artist studio or school	R3, RA and RB
7	Bank, credit union, or savings and loan association	R3, RA and RB
8	Barber shop	R3, RA and RB
9	Batting cage	B1A, B1B and B3B
10	Beauty salon	R3, RA and RB
11	Bed and breakfast establishment	R3, RA and RB
12	Business storage facility	B3B and B4
13	Child and/or adult care center	R3, RA and RB
14	Class II child care home	R1, R2, R3, RA and RB
15	Counseling service	R3, RA, and RB
16	Consulting service	R3, RA, and RB
17	Country club	R1, R2, R3, RA and RB
18	Dance studio or school	R3, RA and RB
19	Dentist office	R3, RA and RB
20	Doctors office	R3, RA and RB
21	Engineer office	R3, RA and RB
22	Fairground	B1A, B1B, B3A and B3B
23	Finance office	R3, RA and RB
24	Funeral home	R1, R2, RA and RB
25	Golf driving range, miniature golf course	B1A, B1B and B3B
26	Hazardous waste treatment, storage and/or disposal facility	M2 and M3
27	Home-based business	R1, R2, R3, RA and RB
28	Home workshop	R1, R2, R3, RA and RB
29	Indoor shooting range	B1A and B1B
30	Insurance office	R3, RA and RB

SPECIAL USES AND DISTRICTS ALLOWED		
	SPECIAL USE	DISTRICT(S)
1	Interior designer office	R3, RA, and RB
2	Junk and salvage yard	M3
3	Land surveyor office	R3, RA and RB
4	Law office	R3, RA and RB
5	Loan office	R3, RA and RB
6	Manufactured home Type II	R1, R2, R3, RA and RB
7	Medical related services	R3, RA and RB
8	Medical center or clinic	R3, RA and RB
9	Municipal solid waste landfill facility	M2 and M3
10	Nail salon	R3, RA and RB
11	Neighborhood facility	R1, R2, R3, RA, RB, B1A and B1B
12	Off-premise signs between a 125 foot radius and a 350 foot radius from any city or county residential district, church, school, health care facility, or from any historic district or historic structure	B1A, B1B, B3B, B4, M1, M2 and M3 districts, except for properties within the defined Central Business District
13	Optician or optometrist office	R3, RA, and RB
14	Outdoor recreation uses (ball diamonds and soccer fields)	R3, RA and RB
15	Professional or commercial office	R3, RA and RB
16	Railroad switching yard for truck trailers	M1, M2 and M3
17	Real estate, broker, or appraiser office	R3, RA and RB
18	Residential fencing	R1, R2, R3, RA and RB
19	Self-service storage (mini warehouse) facility	B3B and B4
20	Stockbroker office	R3, RA and RB
21	Tanning salon	R3, RA and RB

22 The following section (Section 157.041) shall be added to the District Regulations
 23 subchapter:

24 **§ 157.041 HOME OCCUPATIONS.** In order to qualify as a home occupation,
 25 the proposed use must comply with all of the following:

- 26 (1) the home occupation shall be operated only by residents of the dwelling;
 27 no outside employees shall be permitted;

- 1
- 2 (2) the home occupation must be incidental and secondary to the principal
3 use of the dwelling as a residence, and shall not change the residential
4 character of the structure or immediate area;
- 5 (3) the home occupation shall be conducted entirely within the dwelling unit.
6 No home occupation shall be operated from an attached or detached
7 accessory structure or garage;
- 8 (4) only normal office equipment, including but not limited to a typewriter,
9 computer, calculator, fax machine, or copier may be used in connection
10 with the home occupation. Equipment noise shall not be permitted to
11 impact adjacent properties or units;
- 12 (5) the home occupation shall not occupy more than 20% of the gross floor
13 area of a dwelling unit, including any space used for storage for the
14 home occupation. All storage related to the home occupation use shall
15 be contained within the dwelling unit;
- 16 (6) the home occupation shall not display or create any external evidence of
17 the operation of the occupation except that a single vehicle, used in
18 conjunction with the occupation, may be parked outside and may display
19 advertising or a logo. The vehicle shall comply with the restrictions in
20 §72.23 of the City Code;
- 21 (7) no structural alterations shall be made to the dwelling to accommodate
22 the home occupation. No separate entrances or building additions shall
23 be added for the use of the home occupation;
- 24 (8) a home occupation shall be permitted in a single family, two family, or
25 multiple family dwelling unit;
- 26 (9) to avoid negative impacts on the character of the surrounding
27 neighborhood, clients or customers are not permitted to come to the
28 home and the address of the home may not be used in any advertising,
29 except for advertising such as printed literature or business cards; and
- 30 (10) no retail sales shall be permitted on the property.

26 **Permitted Home Occupations.** Permitted home occupations shall include but
27 not be limited to:

- 28 (1) art studios;

- (2) business or office bookkeeping and/or accounting;
 - (3) home offices; and
 - (4) typing and other office services.

Prohibited Home Occupations. Prohibited home occupations shall include but not be limited to:

- (1) amusement enterprises of any public nature;
 - (2) barber shops, beauty salons, nail salons, tanning parlors, or similar uses;
 - (3) care and/or breeding of animals, including animal grooming;
 - (4) catering, or food preparation of any kind;
 - (5) equipment repair and/or service;
 - (6) massage therapy;
 - (7) mechanical or body repair of automotive vehicles, other than routine maintenance and minor repair of personal motor vehicles titled to the occupants of the property;
 - (8) production, manufacturing, repair, or assembly of products or components of products; and
 - (9) psychic reading business.

Section 157.002 (Definitions) shall be amended by adding the following definitions:

ADULT CARE CENTER. A building, other than the operator's principal place of residence, where adults receive day care from a provider:

- (1) while unattended by a relative, legal guardian, or custodian;
 - (2) for regular compensation; and

- 1
- 2 (3) for more than four (4) hours but less than twenty-four (24) hours in each
3 of ten (10) consecutive days per year, excluding intervening Saturdays,
4 Sundays and holidays.

5 It is intended that adult care centers be classified as commercial uses, and be
6 located in commercial zoning districts.

7 **ADULT CARE HOME.** A residential structure, which is the primary residence of
8 the adult care provider, in which more than six (6) but less than twelve (12) adults
9 not related to the provider receive day care for regular compensation.

10 **AIRPORT, (PUBLIC and PRIVATE).** Any area of land used for the landing and
11 take-off of aircraft, including all accessory structures and uses.

12 **ASSISTED LIVING FACILITY.** A residential establishment or institution other
13 than a hospital or nursing home which provides living accommodations and
14 medical services primarily to individuals 55 years of age or over and to individuals
15 who, due to illness or disability, require care similar to that provided to persons
16 who are 55 years or over. Services like transportation, housekeeping, dietary
17 supervision, and recreational activities may also be offered.

18 **BED AND BREAKFAST ESTABLISHMENT.** A house, or portion thereof,
19 where short-term lodging rooms with or without meals are provided for
20 compensation. The operator(s) shall live on the premises.

21 **CHILD CARE.** A service that provides for the care, health, safety, supervision
22 and/or guidance of a child's social, emotional, and educational growth, on a regular
23 basis, in a place other than the child's own home.

24 The following uses shall not be considered as child care under the terms of this
25 chapter:

- 26 (1) a program for children operated by the department of education or a
27 public or private school;
- 28 (2) a nonresidential program that provides child care for less than four (4)
29 hours a day;
- 30 (3) a recreational program for children that operates for not more than ninety
31 (90) days in a calendar year;
- 32 (4) a program whose primary purpose is to provide social, recreational, or

1
2 religious activity for school age children such as scouting, boys club,
3 girls club, sports or the arts; and

- 4 (5) child care where the provider cares for fewer than six (6) children, not
5 including children for whom the provider is a parent, stepparent,
6 guardian, custodian, or other relative.

7 **CHILD CARE CENTER.** A building, other than the operator's principal place of
8 residence, where children receive child care from a provider:

- 9 (1) while unattended by a parent, legal guardian, or custodian;
10 (2) for regular compensation; and
11 (3) for more than four (4) hours but less than twenty-four (24) hours in each
12 of ten (10) consecutive days per year, excluding intervening Saturdays,
13 Sundays and holidays.

14 The child care provider must hold a valid license from the State of Indiana. It is
15 intended that child care centers be classified as commercial uses, and be located in
16 commercial zoning districts.

17 **CHILD CARE HOME.** A residential structure, which is the primary residence of
18 the child care provider, in which at least six (6) children (not including the
19 children for whom the provider is a parent, stepparent, guardian, custodian, or
20 other relative) at any time receive child care from a provider:

- 21 (1) while unattended by a parent, legal guardian, or custodian;
22 (2) for regular compensation; and
23 (3) for more than four (4) hours but less than twenty-four (24) hours in each
24 of ten (10) consecutive days per year, excluding intervening Saturdays,
25 Sundays and holidays.

26 The child care provider must hold a valid license from the State of Indiana. This
27 term includes a Class I Child Care Home and a Class II Child Care Home which
28 are defined as follows:

- 29 (1) **Class I Child Care Home.** A child care home that serves up to twelve
30 (12) children at any time. The children may be at the home on either a
part-time or full-time basis; and

(2) **Class II Child Care Home.** A child care home that serves more than twelve (12) but not more than sixteen (16) children at any time. The children may be at the home on either a part-time or full-time basis.

COMMERCIAL COMMUNICATIONS TOWER OR DISH. A structure designed for transmitting or receiving radio, television, or telephone communications for commercial purposes, excluding amateur radio antennas, residential satellite dishes and antennas, or similar residential structures or facilities.

CONVALESCENT HOME (See "Nursing Home").

CORRECTIONAL INSTITUTION. A place of confinement for persons who have broken the law, are awaiting trial, and/or have been convicted of criminal offenses.

COUNTRY CLUB. An establishment typically associated with a golf course which is intended as a place for social and recreational gatherings for members of a private club.

DOCTOR/DENTIST OFFICE. The private offices of not more than two (2) physicians, dentists, or similar professionals, where persons are examined or treated on an outpatient basis only. Laboratory tests shall be permitted as an accessory use.

FRATERNITY OR SORORITY HOUSE. A building, rented, occupied or owned by a national or local chapter of an organized college fraternity or sorority which is officially recognized by a college, university, or other educational institution.

FUNERAL HOME (MORTUARY). A building used for human funeral services. The building may contain space and facilities for:

- (1) embalming, cremation and the performance of other services used in preparation of the dead for burial;
 - (2) the performance of autopsies and other similar surgical procedures;
 - (3) the storage of caskets, funeral urns, and other related funeral supplies;
 - (4) the storage of funeral vehicles; and
 - (5) a funeral chapel.

GARAGE, RESIDENTIAL. A detached accessory structure or portion of a principal building used for the storage of motor vehicles. The square footage of a garage and all other accessory structures shall not exceed the ground floor square footage of the principal building for a one-story structure and 1.5 times the ground floor square footage for a structure over one-story in height. In either case, the square footage of any attached garage or attached accessory structure shall be excluded from the ground floor square footage total.

GROSS FLOOR AREA. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage, not including any uncovered or unenclosed porches, patios, or decks.

HAZARDOUS WASTE. Solid waste or a combination of solid wastes that, because of quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) cause or significantly contribute to an increase in mortality or increase in serious irreversible or incapacitating reversible illness; or
 - (2) pose a substantial present or potential hazard when improperly treated, stored, transported, disposed of, or otherwise managed.

HAZARDOUS WASTE DISPOSAL AREA. The outermost perimeter of the area within a hazardous waste disposal facility that is permitted to receive hazardous waste for disposal.

HAZARDOUS WASTE TREATMENT, STORAGE AND/OR DISPOSAL FACILITY. A solid waste land disposal facility designed to treat, store and/or dispose of hazardous waste regulated by 329 IAC 3.1 or any subsequent applicable revisions. The facility shall be constructed and operated in accordance with a permit issued by the appropriate government agency authorized by or under the Resource Conservation and Recovery Act (40 CFR 260 - 40 CFR 270, 42 U.S.C. 6901, and IC 13-7-8.5 et seq.).

HELIPORT. Any landing area used for the landing and taking off of helicopters, including all necessary passenger and cargo facilities, fueling, and emergency service facilities.

HOME-BASED BUSINESS. An accessory use of a single family or two family residential structure which does not meet the definition of a home occupation, but complies with the requirements of §157.032 (I). A home-based business would consist of service oriented uses and typically be more intense than a home

occupation, due to factors such as intensity of use or clients coming to the residence.

HOME OFFICE. An accessory use of a residential dwelling unit, where business and/or office activities are conducted. Typically the office would be an ancillary use for a principal business or office use located elsewhere.

HOME WORKSHOP. A use conducted for the generation of revenue entirely within a dwelling, or in an accessory structure located on the same lot or tract as a dwelling, which complies with the requirements of §157.032 (J). The use must: be clearly incidental and secondary to the use of the property for residential purposes; not change the character of the structure or area; or have any exterior evidence of the workshop. Home workshops are intended to be limited to low intensity uses that produce or repair a product, but can be operated in such a way that they do not adversely affect adjacent properties.

INTEGRAL CHASSIS. A frame or structure utilizing metal I-beams, necessary for the transportation of a Type II or III manufactured dwelling unit as defined here, and for the support of the dwelling unit once it is placed on a foundation or other means of support.

MANUFACTURED HOME PARK. A parcel of land designed for use by one or more Type II or Type III manufactured homes which provides the infrastructure and utilities necessary for single family occupancy of those homes.

MANUFACTURED HOME, TYPE II. A structure, fabricated in an off-site manufacturing facility for installation or assembly at a building site, bearing a seal certifying that it is built in compliance with the Federal Manufactured Home Construction and Safety Standards Act (42 USC Section 5401, et. Seq.) or Indiana Code 22-15-4-1 (as opposed to a Type I manufactured home which is built in conformance with the Indiana One and Two Family Dwelling Code). To be considered a Type II manufactured home, the structure must:

- (1) contain at least nine hundred fifty (950) square feet of occupied space per dwelling unit;
- (2) be a double or multiple section unit;
- (3) be placed on a permanent under-floor foundation installed in conformance with the Indiana One and Two Family Dwelling Code and according to the manufacturer's installation specifications;

- (4) be placed onto a permanent perimeter enclosure in conformance with the Indiana One and Two Family Dwelling Code;
 - (5) have the wheels, axles, and hitch mechanisms removed;
 - (6) have siding and roofing material of a type customarily used on dwellings constructed on-site;
 - (7) be connected to all the utilities necessary for the occupancy of the unit, in conformance with the Indiana One and Two Family Dwelling Code; and
 - (8) have been constructed after January 1, 1981.

MANUFACTURED HOME, TYPE III. A structure, fabricated in an off-site manufacturing facility, which is transportable in one or more sections and is designed for use as a single family dwelling. A mobile home would meet this definition. To be considered a Type III manufactured home, the structure must:

- (1) be properly connected to all utilities necessary for the occupancy of the unit; and
 - (2) be set on piers and properly skirted, with wheels and axles removed, in a manufactured home park.

MASSAGE THERAPY ESTABLISHMENT. Any establishment having a source of income or compensation derived from the practice of massage, which complies with and is licensed under the provisions of Chapter 114 of the City Code.

MEDICAL CENTER (see "Medical/Dental Clinic").

MEDICAL/DENTAL CLINIC. A facility organized and operated for the primary purpose of providing health services for outpatient treatment and care, staffed by three or more licensed physicians and/or professionals, and their associates. This use includes laboratories, pharmacies, and other related service facilities operated in conjunction with the clinic.

MOBILE HOME (see "Manufactured Home, Type III").

MOBILE HOME PARK (see “Manufactured Home Park”).

MODULAR HOME (see "Manufactured Home, Type I").

MORTUARY (see "Funeral Home").

MUNICIPAL SOLID WASTE LANDFILL FACILITY. A publicly or privately owned land disposal facility designed to accommodate and dispose of certain types of solid waste as defined and described in 329 IAC 10-2, excluding hazardous waste regulated by 329 IAC 3.1 or any subsequent applicable revisions. The facility shall be operated by spreading the waste in layers, compacting to the smallest practical volume, and covering with material applied at the end of each operating day. The facility shall be operated under permits issued by the appropriate government agencies.

NURSING HOME. A facility licensed by the State Board of Health which provides nursing services on an continuing basis; admits the majority of the occupants upon the advice of physicians as ill or infirm persons requiring nursing services; provides for licensed physicians services or supervision; and maintains medical records. A convalescent home, health and rehabilitation center, and rest home, if meeting the above criteria, shall also be included under this definition.

OUTDOOR RECREATION FACILITY. Private recreation facilities which do not include athletic or recreational fields as a primary component of the use. Structures are typically required by or are part of the principal use of the facility. This use shall not include public parks, public recreation areas or recreation uses which are accessory uses to existing permitted primary uses.

OUTDOOR RECREATION USE. Private athletic or recreational fields or similar uses. Structures may be required by the uses; however, they would typically only be provided as accessory uses to the primary recreation use. This use shall not include public parks, public recreation areas or recreation uses which are accessory uses to existing permitted primary uses.

PERMANENT FOUNDATION. A structural system for transferring loads from a structure to the earth, which meets the applicable specifications and requirements of the Indiana One and Two Family Dwelling Code.

RECREATIONAL VEHICLE. A vehicle built on a single chassis, containing 400 square feet or less when measured at the largest horizontal projections, and designed to be self propelled or towed by another vehicle. A recreational vehicle is not designed or intended for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use. This definition includes vehicles such as travel trailers, motor homes, boats, house boats, and campers.

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2 **REST HOME** (See "Nursing Home").
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8 **RETIREMENT FACILITY.** A independent living facility designed to meet the
9 needs of persons 55 years of age or over. Typically the facility consists of
10 independent living apartments along with common areas for meals, social
11 gatherings, and recreation. Services such as transportation, housekeeping, dietary
12 supervision, recreational activities, and coordination for home health care may also
13 be offered. However, the primary purpose of the facility is not to provide medical
14 services for its residents.
15

16 **SANITARY LANDFILL** (See "Municipal Solid Waste Landfill Facility").
17
18

19 **SELF-SERVICE STORAGE (MINI-WAREHOUSE) FACILITY.** A building
20 or group of buildings consisting of individual, self-contained units that are leased
21 to individuals, organizations, or businesses for self-service storage of personal
22 property.
23

24 **SOLID WASTE.** Any garbage, refuse, sludge from a wastewater treatment plant,
25 sludge from a water supply treatment plant, sludge from an air pollution control
26 facility, or other discarded material as described in 329 IAC 10-2-174(A)(6).
27 However, the term "solid waste" does not include the following:
28

- 29 (1) solid or dissolved material in domestic sewage, solid or dissolved
30 materials in irrigation return flows, or industrial discharges which are
31 point sources subject to permits under Section 402 of the Federal Water
32 Pollution Control Act Amendments (33 U.S.C. 1342) and under Chapter
33 51 of the City Code;
34
35 (2) source, special nuclear, or byproduct material as defined by the Atomic
36 Energy Act of 1954 (42 U.S.C. 2014 et seq.);
37
38 (3) manures or crop residues returned to the soil at the point of generation as
39 fertilizers or soil conditioners as part of a total farm operation; or
40
41 (4) vegetative matter at composting facilities registered under IC 13-7-35.
42

43 **WASTE DISPOSAL AREA.** The outermost perimeter of the area within a
44 municipal solid waste disposal facility that is permitted to receive solid waste for
45 disposal.
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1
2 Section 157.002 (Definitions) shall be amended by changing the following
3 definitions:

4 **CEMETERY.** Land used for burial of the dead and dedicated for related
5 purposes, including crematories, mausoleums and mortuaries when operated in
6 conjunction with and within the boundaries of a cemetery.

7 **DAY CARE (ADULT or CHILD).** A service that provides for the care, health,
8 safety, and supervision of an individual, not related to the provider, on a regular
9 basis, in a residential structure other than the individual's own home. The
10 provision of day care shall be a permitted use in all residential zoning districts if
11 the following conditions are met:

- 12 (1) the home must be the primary residence of the day care provider; and
13 (2) services shall be provided for fewer than six (6) adults or children not
14 related to the provider.

15 **EDUCATIONAL INSTITUTION.** A public, parochial, private, or nonprofit pre-
16 school, primary or secondary school, junior college, college or university other
17 than a trade or business school. Such institutions may include living quarters,
18 dining halls, restaurants, recreational amenities, heating plants, and other accessory
19 facilities for students, teachers and employees.

20 **GROUP RESIDENTIAL FACILITY.** A residential facility for a group of
21 individuals (who are not mentally ill or developmentally disabled) having full or
22 part-time supervisory staff providing care, education, and participation in
23 community activities, living in a district authorizing residential uses. A retirement
24 facility shall not be included under this definition.

25 **HOME OCCUPATION.** An accessory use of a single family, two family or
26 multiple family dwelling unit which complies with the requirements of §157.041.

27 **JUNK and SALVAGE.** Scrap materials, including but not limited to the
28 following:

- 29 (1) automobile or machinery equipment or parts, including used automobile
30 tires;
31 (2) cloth and clothing;
32 (3) manufactured clay and porcelain products;

- (4) manufactured plastic products;
 - (5) manufactured rubber products;
 - (6) paper and paper products;
 - (7) recyclable products of all kinds;
 - (8) scrap metal;
 - (9) wood and wood products; and
 - (10) wrecked and/or dismantled automobiles and machinery.

JUNK and SALVAGE YARD. A lot, tract, development parcel, structure, or business operation which is primarily used for storing, processing, selling, or dismantling junk and salvage. This shall include but not be limited to scrap metal processing yards and business operations where the primary use is the storage of wrecked, junked, dismantled, or inoperable vehicles. A business operation conducted and contained entirely within an enclosed building shall not be considered a junk and salvage yard. However, the storage of used tires in an enclosed building shall be considered a junk and salvage yard.

MANUFACTURED HOME. A structure, fabricated in an off-site manufacturing facility, which is transportable in one or more sections and is designed for use as a dwelling with or without a permanent foundation when connected to the required utilities. Such a structure may or may not be built on an integral chassis. The term "manufactured home" shall not include a "recreational vehicle".

MANUFACTURED HOME, TYPE I. A structure, fabricated in an off-site manufacturing facility for installation or assembly at a building site, which is designed for use as a dwelling, either by itself or in conjunction with other similar units. Typically, a modular home would fall under this definition. To be considered a Type I manufactured home, the structure must:

- (1) be constructed in conformance with the Indiana One and Two Family Dwelling Code;
 - (2) consist of two or more sections;
 - (3) be placed on a continuous, permanent underfloor foundation which is not pierced, except for required ventilation and access;

- 1
- 2 (4) have siding and roofing material of a type customarily used on dwellings
3 constructed on-site;
- 4 (5) not be constructed with an integral chassis or permanent hitch; or wheels,
5 axles, or other device allowing transportation; and
- 6 (6) be designed to be transported by a trailer or other similar carrier which is
7 not designed to be permanently attached to the dwelling or remain with
8 it after the structure is placed on its foundation.

9

10 Section 157.002 (Definitions) shall be amended by deleting the following
11 definitions:

12 **CLINIC OR MEDICAL HEALTH CENTER**

13 **DAY CARE HOME**

14 **GARAGE, PRIVATE**

15 **MOBILE HOME PARK**

16 **TRAILER PARK**

17 **WAREHOUSE, SELF-SERVICE STORAGE FACILITY (MINI-**
18 **WAREHOUSE)**

19 Section 157.033 (A)(1) and (6) (Permitted Uses) shall be amended by changing the
20 following:

21 **§ 157.033 PERMITTED USES.**

22 The following uses shall be permitted in the district hereinafter specified:

23 **(A) R1 District, One-Family Residence.**

24 (1) One-family dwelling, including Type I manufactured home.

25 (6) Day care (adult or child), class I child care home, adult care home.

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3 SECTION 2. That this Ordinance shall be in full force and effect from and after
4 its passage and approval by the Mayor.

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6
7
8 
Rebecca Larris
Councilmember

9
10 APPROVED AS TO FORM AND LEGALITY:
11

12 J. TIMOTHY McCAULAY, CITY ATTORNEY

Read the first time in full and on motion by
and, duly adopted, read the second time by title and referred to the
Committee on Regulations (and the City Plan Commission
for recommendation) and Public Hearing to be held after due legal notice, at
the Common Council Council Conference Room 128, City-County Building, Fort
Wayne, Indiana, on 19, the day of 19 o'clock
M., E.S.T.

DATED: 3-12-96

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Sandra E. Kennedy,
and duly adopted, placed on its passage. PASSED
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>8</u>			<u>1</u>
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS	<u>✓</u>			
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY				<u>✓</u>
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 4-23-96

SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 2-03-96
on the 23rd day of April, 19 96

ATTEST: (S.A.L.)
Sandra E. Kennedy *OD Schmitz*
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 24th day of April, 19 96,
at the hour of 10:00 o'clock A.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 25th day of April,
19 96, at the hour of 8:30 o'clock A M., E.S.T.

Paul Heimke
PAUL HEIMKE, MAYOR

FACT SHEET

G-96-03-04 (AS AMENDED)

BILL NUMBER

Division of Community
Development & Planning

BRIEF TITLE

Zoning Ordinance Amendment

APPROVAL DEADLINE

REASON

2-96-03-04

(as amended)

DETAILS

Specific Location and/or Address
N/A
Reason for Project
Approval of the amendment will improve staff's ability to deal with current zoning and land use issues; it will address several changes to State law; it will improve zoning enforcement; and it will give the Board of Zoning Appeals more guidance in their reviews of contingent and special uses.
Discussion (Including relationship to other Council actions)
<u>18 March 1996 - Public Hearing</u> (See Attached Minutes of Meeting)
<u>26 March 1996 - Business Meeting</u> Motion was made and seconded to return the ordinance to the Common Council as amended. Of the seven (7) members present, six (6) voted in favor of the motion, one (1) did not vote. Motion carried. Members Present: Linda Buskirk, Ernest Evans, Dede Hall, Stanley Phillips, Richard Pierce, Dave Ross, Carol Kettler Sharp Members Absent: James Hoch, Thomas Quirk

POSITIONS	RECOMMENDATIONS		
Sponsor	City Plan Commission		
Area Affected	City Wide		Other Areas
Applicants/ Proponents	Applicant(s) Land Use Management - C&ED		
	City Department		
	Other		
Opponents	Groups or Individuals		
	Basis of Opposition		
Staff Recommendation	<input checked="" type="checkbox"/> For	<input type="checkbox"/> Against	
			Reason Against
Board or Commission Recommendation	By		
	<input checked="" type="checkbox"/> For	<input type="checkbox"/> Against	
	<input type="checkbox"/> No Action Taken		
	<input type="checkbox"/> For with revisions to conditions		
	(See Details column for conditions)		
CITY COUNCIL ACTIONS (For Council use only)	<input type="checkbox"/> Pass	<input type="checkbox"/> Other	
	<input type="checkbox"/> Pass (as amended)	<input type="checkbox"/> Hold	
	<input type="checkbox"/> Council Sub.	<input type="checkbox"/> Do not pass	

TAILS

POLICY/ PROGRAM

ACT

Policy or Program Change	<input type="checkbox"/> No	<input type="checkbox"/> Yes
Operational Impact Assessment		

(This space for further discussion)

Project Start

Date 12 March 1996

Projected Completion or Occupancy

Date 11 April 1996

Fact Sheet Prepared by

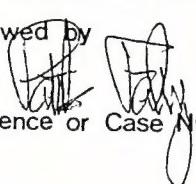
Date 11 April 1996

Patricia Biancaniello

Reviewed by

Date 11 April 1996

Reference or Case Number



ORIGINAL

ORIGINAL

#609

DIGEST SHEET

TITLE OF ORDINANCE Zoning Ordinance Amendment

DEPARTMENT REQUESTING ORDINANCE Land Use Management - C&ED

SYNOPSIS OF ORDINANCE The sections of the Zoning Ordinance relating to the Board of Zoning Appeals, Contingent Uses, Special Uses, Home Occupations, Day Care and Manufactured Homes are being amended and updated. Definitions relating to these sections are being amended, updated, and added as necessary.

2-96-03-04

(as amended)

EFFECT OF PASSAGE Approval of the amendment will improve staff's ability to deal with current zoning and land use issues; it will address several changes to State law; it will improve zoning enforcement; and it will give the B.Z.A. more guidance in their reviews of contingent and special uses.

EFFECT OF NON-PASSAGE The community and staff will continue to have to deal with outdated Ordinance provisions; staff will continue to have difficulty addressing current land use issues; the local Ordinance will not be in full compliance with current State law in several areas.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) N/A

(ASSIGN TO COMMITTEE) Regulations; the proposed amendment must receive a recommendation from the Plan Commission prior to consideration and action by Council.

BILL NO. Z-96-03-04 (as amended)

REPORT OF THE COMMITTEE ON
REGULATIONS

REBECCA J. RAVINE - THOMAS E. HAYHURST - CO-CHAIR
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS

REFERRED AN (ORDINANCE) (RESOLUTION) amending the City of
Fort Wayne Zoning Ordinance

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (RESOLUTION)

DO PASS DO NOT PASS ABSTAIN NO REC

Rebecca Ravine _____

Thomas Hayhurst _____

Martin J. Bender _____

Jay N. Campbell _____

John S. Dorn _____

William F. Goss _____

Wendie Hall _____

DATED:

2/16/96

Sandra E. Kennedy
City Clerk